



भारत का राजपत्र The Gazette of India

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

साप्ताहिक

WEEKLY

सं. 25]

नई दिल्ली, जून 16—जून 22, 2019, शनिवार/ज्येष्ठ 26—आषाढ़ 1, 1941

No. 25]

NEW DELHI, JUNE 16—JUNE 22, 2019, SATURDAY/JYAIKTHA 26—ASADHA—1, 1941

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)

PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

गृह मंत्रालय

नई दिल्ली, 10 जून, 2019

का.आ. 978.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 (यथा-संशोधित, 1987) के नियम 10 के उप-नियम (4) के अनुसरण में, गृह मंत्रालय के निम्नलिखित कार्यालयों में हिन्दी का कार्यसाधक ज्ञान रखने वाले कर्मचारियों की संख्या 80% से अधिक हो जाने के फलस्वरूप इन, कार्यालयों को एतद्वारा अधिसूचित करती है:—

केन्द्रीय रिजर्व पुलिस बल

1. पुलिस उपमहानिरीक्षक
रेंज मुख्यालय, केरिपुब, घोड़ापैगा, जगदलपुर,
जिला-बस्तर (छत्तीसगढ़) पिन-494001
2. कमांडेंट,
241 बस्तरिया बटालियन, केरिपुबल, सेडवा,
बस्तर (छत्तीसगढ़) पिन-497001

3. पुलिस उपमहानिरीक्षक,
ग्रुप केन्द्र, केरिपुबल, संबलपुर, पोस्ट-कालामाटी
संबलपुर, (ओडिशा) पिन-768025
4. कमांडेंट, 211 बटालियन, केरिपुबल, थनोड, पोबनपुर,
जिला-रायपुर (छत्तीसगढ़) पिन-493661
5. कमांडेंट,
236 बटालियन, केरिपुबल, बवाना,
उत्तरी पश्चिमी दिल्ली-110039
6. पुलिस उपमहानिरीक्षक (चिकित्सा)
संयुक्त अस्पताल, केरिपुबल, ग्रुप केन्द्र परिसर,
नयापल्ली, भुवनेश्वर (ओडिशा)-751011

[सं. 11029/01/2017-हिन्दी]
सहेली घोष रॉय, संयुक्त सचिव

MINISTRY OF HOME AFFAIRS

New Delhi, the 10th June, 2019

S.O. 978.— In pursuance of sub-rule (4) of Rule 10 of the Official Language (Use for official purposes of the Union) Rules, 1976 (as amended in 1987), the Central Government hereby notifies the following offices of the Ministry of Home Affairs, wherein the percentage of the staff, having working knowledge of Hindi has gone above 80%:-

Central Reserve Police Force

1. Office of the Deputy Inspector General of Police
Range HQrs CRPF, Ghodapaiga, Jagdalpur,
Distt- Baster (Chhattisgarh) Pin-494001
2. Office of the Commandant,
241, Bastariya Battalion,
CRPF, Sedva, Distt-Baster (Chhattisgarh) Pin-497001
3. Office of the Deputy Inspector General of Police
Group Centre, CRPF, Sambalpur, P O-Kalamati,
Distt-Sambalpur (Odisha) Pin-768025
4. Office of the Commandant,
211 Battalion, CRPF, Thanaud, Poabhanpur, Distt-Raipur
(Chhattisgarh) Pin-493661
5. Office of the Commandant,
236 Battalion, CRPF, Bawana, North
West Delhi-110039
6. Office of the Deputy Inspector General of Police (Medical)
Composite Hospital, CRPF, Group Centre Complex, Nayapalli
Bhubneshwar, Odisha-751011

[No. 11029/01/2017-Hindi]
SAHELI GHOSH ROY, Jt. Secy.

वित्त मंत्रालय
(वित्तीय सेवाएं विभाग)

नई दिल्ली, 14 जून, 2019

का.आ. 979.—सरकार, एतद्वारा, वित्तीय सेवाएं विभाग, वित्त मंत्रालय में अपर सचिव श्री रवि मित्तल को तत्काल प्रभाव से छह महीने की अवधि के लिए अथवा किसी नियमित अधिकारी की नियुक्ति होने तक अथवा अगले आदेशों तक, जो भी पहले हो, उनके वर्तमान उत्तरदायित्वों के अतिरिक्त पेंशन निधि विनियामक और विकास प्राधिकरण (पीएफआरडीए) के अध्यक्ष का अतिरिक्त प्रभार सौंपती है।

[फा. सं. 19/4/2019—पीआर]

मदनेश कुमार मिश्र, संयुक्त सचिव

MINISTRY OF FINANCE
(Department of Financial Services)

New Delhi, the 14th June, 2019

S.O. 979.—Government hereby assigns the additional charge of Chairperson, Pension Fund Regulatory and Development Authority to Shri Ravi Mital, Additional Secretary, Department of Financial Services, Ministry of Finance, in addition to his present responsibilities, with immediate effect, for a period of six months or till the appointment of a regular incumbent or until further orders, whichever is the earliest.

[F. No.19/4/2019-PR]

MADNESH KUMAR MISHRA, Jt. Secy.

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय
(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 13 जून, 2019

का. आ. 980.—केन्द्र सरकार एतद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम संख्या 25) की धारा 6 के साथ पठित धारा 5 की उपधारा (1) द्वारा, प्रदत्त शक्तियों का प्रयोग करते हुए उत्तर प्रदेश राज्य सरकार, गृह (पुलिस) धारा -3, लखनऊ के आदेश सं. 326(2)पी/VI-पी-3-2018-4(36)पी/17 लखनऊ दिनांक 29 जनवरी 2018, के माध्यम से प्राप्त सहमति से भारतीय दंड संहिता 1860 (1860 का 45) की धारा 302, 201 के अंतर्गत पुलिस थाना नोएडा, सेक्टर -20, जिला गौतमबुद्धनगर, उत्तर प्रदेश में दर्ज मामला अपराध सं. 1023/2017 में आगे की जांच करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार समस्त उत्तर प्रदेश राज्य में करती है।

[फा. सं. 228/05/2018-एवीडी-11]

एस. पी. आर. त्रिपाठी, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS
(Department of Personnel and Training)

New Delhi, the 13th June, 2019

S.O. 980.—In exercise of the powers conferred by sub-section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Uttar Pradesh, Home (Police) Section – 3, Lucknow issued vide Order No. 326(2)P/VI-P-3-2018-

4(36)P/17 Lucknow dated 29th January 2018, hereby extends the power and jurisdiction of the member of the Delhi Special Police Establishment in the whole of the State of Uttar Pradesh for further investigation of Case Crime No. 1023/2017 under section 302, 201 IPC 1860 (45 of 1860) registered at Police Station Noida, Sector-20, District Gautambudh Nagar, Uttar Pradesh.

[F. No. 228/05/2018-AVD-II]

S. P. R. TRIPATHI, Under Secy.

नई दिल्ली, 13 जून, 2019

का. आ. 981.—केन्द्र सरकार एतद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम संख्या 25) की धारा 6 के साथ पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए त्रिपुरा राज्य सरकार, गृह विभाग की अधिसूचना सं. एफ. 21(2)-पीडी/2012(पी-1)/2948 दिनांक 04.12.2017 के माध्यम से प्राप्त सहमति से श्री पी. के. बोस, भूतपूर्व निदेशक, एनआईटी अगरतला एवं अन्य के द्वारा 2008 से 2014 की अवधि के दौरान आधिकारिक शक्तियों/पदों का दुरुपयोग कर प्रशासनिक ब्लॉक नवीकरण, लड़के और लड़कियों के छात्रावास निर्माण, बर्क स्टेशनों, बिजली उपकेन्द्रों तथा अन्य सिविल निर्माण कार्यों और नियुक्ति इत्यादि में बरती गई गंभीर अनियमितताओं तथा धन के गबन से संबंधित अपराधों, जो जिरानिया पुलिस थाना मामला संख्या 2015 जेआरएन 046 दिनांक 09.12.2015 में शामिल नहीं है तथा जिसकी सीआईडी त्रिपुरा द्वारा जांच की जा रही है, और जो भारतीय दंड संहिता की धारा 409, 420, 120, बी, के अंतर्गत तथा भ्रष्टाचार निवारण अधिनियम, 1988 की धारा 13(1)(डी) के साथ पठित 13(2) के तहत दंडनीय अपराध हैं, के अन्वेषण के लिए तथा उपर्युक्त अपराधों के संबंध में किए गए दुष्प्रयासों, दुष्प्रेरणाओं और षड्यंत्रों तथा उसी संव्यवहार में किए गए अथवा उन्हीं तथ्यों से उत्पन्न प्रासंगिक किसी अन्य अपराध/अपराधों का अन्वेषण करने के लिए और साथ ही दोषी व्यक्ति के विरुद्ध आपराधिक अभियोजन चलाने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार समस्त त्रिपुरा राज्य में करती है।

[फा. सं. 228/59/2017-एवीडी-11]

एस. पी. आर. त्रिपाठी, अवर सचिव

New Delhi, the 13th June, 2019

S.O. 981.—In exercise of the powers conferred by sub-section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of State Government of Tripura, Home Department issued vide Notification No. F. 21(2)-PD/2012 (P-I)/2948 dated 04.12.2017 hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment in whole of the State of Tripura for investigation of the offences relating to serious irregularities and embezzlement of funds in renovation of Administrative Block, construction of boys and girls hostels, Workstations, Electrical Substations & other Civil constructions and in appointment etc. committed by Shri P. K. Bose, Ex-Director, NIT Agartala & others by abuse of official powers/positions during the period 2008 to 2014, which are not covered in the Jirania PS Case No. 2015JRN046 dated 09.12.2015 being investigated by CID Tripura, punishable U/s 409, 420, 120B IPC and Section 13(2) read with 13(1)(d) of P. C. Act, 1988 and any other offence/offences, attempt, abetments and conspiracy in relation to or in connection with the above mentioned offences and any other offence/offences committed in course of the same transaction arising out of the same facts and simultaneously launching of criminal prosecution against the guilty persons.

[F. No. 228/59/2017-AVD-II]

S.P.R. TRIPATHI, Under Secy.

स्वास्थ्य और परिवार कल्याण मंत्रालय**(स्वास्थ्य और परिवार कल्याण विभाग)**

नई दिल्ली, 7 मार्च, 2019

का. आ. 982.—भारतीय आयुर्विज्ञान परिषद् अधिनियम, 1956 (1956 का 102) की धारा 11 की उप-धारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्र सरकार, भारतीय आयुर्विज्ञान परिषद् से परामर्श करके उक्त अधिनियम की प्रथम अनुसूची में, निम्नलिखित और संशोधन करती है, अर्थात्:-

उक्त प्रथम अनुसूची में

1) 'मान्यताप्राप्त आयुर्विज्ञान अर्हता' [जिसे इसके आगे कालम(2) कहा गया है] शीर्षक के अधीन, "केरल यूनिवर्सिटी ऑफ हेल्थ साइंसेज, त्रिशूर" के सामने अंतिम प्रविष्टि के पश्चात और 'पंजीकरण के लिए संक्षिप्तिकरण' [जिसे इसके आगे कालम (3) कहा गया है] से संबंधित प्रविष्टि के संबंध में निम्नलिखित अंतःस्थापित किया जाएगा. अर्थात्:-

(2)	(3)
"डॉक्टर ऑफ मेडिसिन (रेडियो डायग्नोसिस)"	<p>एम.डी (रेडियो डायग्नोसिस)</p> <p>(यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी जब यह अकादमी ऑफ मेडिकल साइंसेज, पेरियरम, कन्नूर में प्रशिक्षित किए गए छात्रों के संबंध में 2015 को या बाद में, "केरल यूनिवर्सिटी ऑफ हेल्थ साइंसेज, त्रिशूर" द्वारा प्रदत्त होगी।)</p>

- नोट:** 1. इस प्रकार दी गई ऐसी मान्यता अधिसूचना की तारीख से अधिकतम 5 वर्ष के लिए होगी और उसके बाद इसका नवीकरण करवाना होगा।
2. मान्यता के 'नवीकरण' की प्रक्रिया वही होगी जो मान्यता प्रदान करने के लिए लागू होती है।
3. अपेक्षित मान्यता का समय से नवीकरण करवाने में विफल रहने पर, परिणाम स्वरूप, निरपवाद रूप से संबंधित स्नातकोत्तर पाठ्यक्रमों में प्रवेश बंद हो जाएगा।

[सं. यू-12012/34/2019-एमई-1/एफटीएस. नं. 3200038]

पी. के. बंदोपाध्याय, अवर सचिव

MINISTRY OF HEALTH AND FAMILY WELFARE**(Department of Health and Family Welfare)**

New Delhi, the 7th March, 2019

S.O. 982.—In exercise of the powers conferred by sub-section (2) of the section 11 of the Indian Medical Council Act, 1956 (102 of 1956), the Central Government, after consulting the Medical Council of India, hereby makes the following further amendments in the First Schedule to the said Act, namely:—

In the said Schedule :-

- I) against "Kerala University of Health Sciences, Thrissur", under the heading 'Recognized Medical Qualification' [hereinafter referred to as column (2)], after the last entry and entry relating thereto under the heading 'Abbreviation for Registration' [hereinafter referred to as column (3)], the following shall be inserted, namely:-

(2)	(3)
“Doctor of Medicine (Radio-Diagnosis)”	MD (Radio-Diagnosis) (This shall be a recognized medical qualification when granted by Kerala University of Health Sciences, Thrissur in respect of students being trained at Academy of Medical Sciences, Pariyaram, Kannur on or after 2015).
Note:	
1. The recognition so granted shall be for a maximum period of 5 years from the date of notification, upon which it shall have to be renewed. 2. The procedure for ‘Renewal’ of recognition shall be same as applicable for the award for recognition. 3. Failure to seek timely renewal of recognition as required shall invariably result in stoppage of admission to the concerned Postgraduate Courses.	
[No. U-12012/34/2019-ME-I/FTS No. 3200038] P.K. BANDYOPADHYAY, Under Secy.	

विद्युत मंत्रालय

नई दिल्ली, 14 जून, 2019

का. आ. 983.—केंद्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में विद्युत मंत्रालय के प्रशासनिक नियंत्रणाधीन पावर सिस्टम ऑपरेशन कारपोरेशन लिमिटेड के पूर्वी क्षेत्रीय भार प्रेषण केंद्र, 14, गोल्फ क्लब रोड, टॉलीगंज, कोलकाता-700033 जिसके 80 प्रतिशत कर्मचारीवृंद ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को एतद्वारा अधिसूचित करती है।

[सं. 11011/9/2017-हिंदी]

राज पाल, आर्थिक सलाहकार

MINISTRY OF POWER

New Delhi, the 14th June, 2019

S.O. 983 .—In pursuance of Sub-Rule (4) of Rule 10 of the Official Languages (use for official purpose of the Union) Rules, 1976, the Central Government hereby notify the Eastern Regional Load Despatch Centre, 14, Golf Club Road, Tollygunge, Kolkata-700033 of Power System Operation Corporation Ltd. under the administrative control of Ministry of Power, where 80% of the staff have acquired working knowledge of Hindi.

[No.11011/9/2017-Hindi]

RAJ PAL, Economic Adviser

परमाणु ऊर्जा विभाग

मुंबई, 23 मई, 2019

का.आ. 984.—परमाणु ऊर्जा अधिनियम, 1962 (1962 का 33) की धारा 14 की उप-धारा (4) और धारा 30 की उप-धारा 2(1) के तहत प्रदत्त शक्तियों का प्रयोग करते हुए केंद्र सरकार दिनांक 30.06.1984 के परमाणु ऊर्जा (खानों व खनिजों का कार्य एवं विहित पदार्थों का प्रहस्तन) नियमावली 1984 में निम्नलिखित नियमों में एतद्वारा संशोधन करती है :

2. (i) इन नियमों को परमाणु ऊर्जा [(खानों व खनिजों का कार्य एवं विहित पदार्थों का प्रहस्तन) संशोधन] नियमावली, 2019 कहा जाएगा।

(ii) ये नियम पूरे भारत समेत उसके राज्य क्षेत्रीय समुद्री सीमा पर लागू होंगे।

(iii) ये नियम सरकारी राजपत्र में प्रकाशित होने की तिथि से प्रभावी होंगे।

3. उपरोक्त नियम के खंड 4(2) में निम्नलिखित नियम को प्रतिस्थापित किया जाएगा, नामतः —

4(2) “प्रत्येक आवेदन के साथ रुपये पांच हजार का शुल्क देना होगा जो कि अप्रतिदेय होगा।”

[फा. सं. 7/3(19)/2010-पीएसयू/6456]

एस. मर्विन एलेक्जेंडर, संयुक्त सचिव

DEPARTMENT OF ATOMIC ENERGY

Mumbai, the 23rd May, 2019

S.O. 984.—In exercise of the powers conferred under sub-section (4) of section 14 and sub-section 2(1) of Section 30 of the Atomic Energy Act, 1962(33 of 1962), the Central Government hereby makes the following rules to amend the Atomic Energy (Working of Mines and Minerals and Handling of Prescribed Substances) Rules 1984 dated 30.06.1984 namely:

2. (i) These rules may be called Atomic Energy [(Working of the Mines, Minerals and Handling of Prescribed Substances) Amendment] Rules, 2019.

(ii) These rules extend to the whole of India including her territorial waters.

(iii) These rules shall come into force on the date of their publication in the Official Gazette.

3. In the said rules Clause 4(2), the following rule shall be substituted, namely:-

4 (2) “Every application shall be accompanied with a fee of rupees Five Thousand which will be non-refundable”.

[F. No.7/3(19)/2010-PSU/6456]

S. MERVIN ALEXANDER, Jt. Secy.

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 14 जून, 2019

का.आ. 985.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उपनियम (4) के अनुसरण में पेट्रोलियम और प्राकृतिक गैस मंत्रालय के प्रशासनिक नियंत्रणाधीन सार्वजनिक क्षेत्र के उपक्रम के निम्नलिखित कार्यालय को, जिसके 80 या अधिक प्रतिशत कर्मचारी वृन्द ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है :—

एम बी ए बेसिन,

ऑयल एण्ड नेचुरल गैस कॉर्पोरेशन लिमिटेड,

टेक्नोपोलिस बिल्डिंग, साल्ट लेक सिटी,

कोलकाता – 700091

[सं. 11011/1/2017 (हिन्दी)]

ऊषा बिन्जोला, संयुक्त निदेशक (राजभाषा)

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 14th June, 2019

S.O. 985.—In pursuance of Sub Rule (4) of Rule 10 of the Official Language (Use for official purpose of the Union) Rules, 1976, the Central Government hereby notifies the following office of the Public Sector Undertaking under the administrative control of the Ministry of Petroleum & Natural Gas, in which 80 or more percent of the staff have acquired working knowledge of Hindi:-

M B A Basin,
Oil and Natural Gas Corporation Ltd.,
Technopolis Building, Salt Lake City,
Kolkata – 700091

[No. 11011/1/2017 (Hindi)]

USHA BINJOLA, Jt. Director (OL)

नई दिल्ली, 17 जून, 2019

का.आ. 986.—केन्द्रीय सरकार को, ऐसा प्रतीत होता है कि लोकहित में यह आवश्यक है कि मध्य प्रदेश एवं उत्तर प्रदेश राज्य में पेट्रोलियम पदार्थों के परिवहन के लिए बीना पंकी (कानपुर) पाइपलाइन परियोजना के क्रियान्वयन हेतु भारत पेट्रोलियम कॉर्पोरेशन लिमिटेड द्वारा पाइपलाइन बिछाई जाना आवश्यक है।

केन्द्रीय सरकार को ऐसी पाइपलाइन बिछाने के प्रयोजन के लिये यह आवश्यक प्रतीत होता है, कि ऐसी भूमि में जो इस से उपाबद्ध अनुसूची में वर्णित है, और जिसमें उक्त पाइपलाइन बिछाई जाने का प्रस्ताव है, उपयोग के अधिकार का अर्जन किया जाए।

अतः अब, केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम 1962 (1962 का 50) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उस भूमि में उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा करती है।

कोई व्यक्ति जो उक्त अनुसूची में वर्णित भूमि में हितबद्ध है, उस तारीख से, जिसको इस अधिसूचना में युक्त भारत के राजपत्र की प्रतियां साधारण जनता को उपलब्ध करा दी जाती है, इक्कीस दिन के भीतर, भूमि के नीचे पाइपलाइन बिछाए जाने के लिए उसमें उपयोग के अधिकार के संबंध में श्री किरोडीलाल मीणा अनुविभागीय अधिकारी (राजस्व) बीना जिला सागर मध्यप्रदेश सक्षम प्राधिकारी, भारत पेट्रोलियम कॉर्पोरेशन लिमिटेड बीना पंकी (कानपुर) पेट्रोलियम पाइपलाइन परियोजना कार्यालय, प्रथम तल, ताप्ति कॉम्प्लेक्स, अगासोद पुलिस स्टेशन के पास, बी.ओ.आर.एल. आवासीय परिसर, बीना, जिला-सागर (म.प्र.) – 470124 को लिखित रूप से आक्षेप भेज सकेगा।

तहसील- टीकमगढ़	अनुसूची जिला-टीकमगढ़	राज्य-मध्य प्रदेश		
		क्षेत्रफल		
गांव का नाम	सर्वे नं./गाटा नं.	हैक्टेयर	एयर	वर्गमीटर
(1)	(2)	(3)	(4)	(5)
कांटी खास	1	00	23	12
	800	00	18	49
	799	00	20	80
	798	00	00	44
	797	00	18	99
	781	00	02	91
	796	00	08	75
	795	00	07	50
	847	00	05	31
	870	00	00	34
	871	0	55	24
	858	00	39	04
	859 / 4	00	54	13
	861 / 1	00	08	18
	860 / 1	00	08	19
	859 / 3 / 2	00	20	43
	862	00	01	44
	744 / 1	00	66	27
	865	00	01	65
	742	01	75	93
	741 / 1	00	03	64
	742 / 8	00	03	87
	740 / 3	00	00	10
	740 / 9	00	61	09
	740 / 8	00	15	20
	739	00	01	87
	735 / 3	00	24	93
	735 / 5 / 1	00	11	27
	738 / 1	00	01	37
	735 / 6 / 1	00	26	90
	735 / 1	00	42	48
	735 / 9	00	22	41
	734 / 1	00	01	75
	731 / 1 / 1	00	09	31
	732 / 1 / 2	00	45	73
	698	00	38	34
	726	00	00	09
	721	00	00	92
	706	00	14	25
	705	00	00	68

(1)	(2)	(3)	(4)	(5)
	707	00	08	07
	708	00	08	01
	711	00	12	14
	713	00	18	26
	728	00	00	94
	Total	09	10	77
कांटी भाटा	68	00	00	95
	235	00	20	66
	234	00	03	79
	232	00	07	21
	236	00	00	24
	238	00	15	33
	242	00	00	54
	230	00	23	83
	243	00	15	33
	244/1	00	04	31
	244	00	24	82
	244/4	00	12	12
	247	00	16	36
	153/1/1	00	40	95
	153	00	39	43
	153/1/3	00	03	16
	95	00	01	99
	128	00	21	27
	127/2/2	00	00	09
	126	00	23	99
	124	00	00	54
	123	00	30	61
	121	00	07	67
	122	00	20	10
	110	00	55	37
	127	00	13	10
	Total	04	03	76
बंधिया	54	00	14	28
	65	00	16	89
	64	00	26	61
	63	00	37	19
	58	00	00	03
	60	00	40	96
	61	00	00	50
	1	00	04	96
	48	00	00	98
	51	00	33	67
	40 / 1 / 3	00	64	43
	40 / 1 / 8	00	16	62
	40 / 1 / 9	00	42	05

(1)	(2)	(3)	(4)	(5)
	39	00	02	49
	30	00	51	86
	25	00	02	60
	24	00	00	08
	18	00	09	75
	6	00	03	53
	15	00	21	20
	14	00	01	64
	8	00	00	85
	13	00	10	80
	11	00	02	82
	Total	04	06	79

[फा. सं. आर-11024(14)/1/2019-ओआर-1/ई-29468]

शान्तनु धर, अवर सचिव

New Delhi, the 17th June, 2019

S.O. 986.— Whereas, it appears to the Central Government, that it is necessary in the public Interest that for the transportation of the Petroleum Product in the state of Madhya Pradesh and Uttar Pradesh Pipeline Should be laid for implementing of Bina-Panki (Kanpur) Pipeline Project by the Bharat Petroleum Corporation Limited.

And Whereas, it appears to the Central Government that for the purpose of laying the said pipeline, It is necessary to acquire the right of user (ROU) in the land under which the said pipeline is proposed to be laid, and which is described in the Schedule annexed to this notification.

Now therefore, in exercise of the powers conferred by Sub section (1) of Section 3 of the petroleum and Minerals Pipeline (Acquisition of Right of user in Land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user there in.

Any person who is interested in the land described in the said schedule, may submit objection in writing to Shri Kirodi Lal Meena SDO (Revenue) Bina District Sagar Madhya Pradesh Competent Authority, Bharat Petroleum Corporation Limited, Bina Panki (Kanpur) Pipeline Project Office 1st Floor Tapti Complex , Near Agasod Police Station , BORL Residential Complex, Bina District Sagar, (M.P.) - 470124 within twenty one days from the date on which the copies of this notification Issued under Sub-section (1) of section 3 of the said Act, as published in the Gazette of India, are made available to the general public.

SCHEDULE**Tehsil : Tikamgarh****District : Tikamgarh****State: Madhya Pradesh**

Name of Village	Survey No. / Gata No.	Area		
		Hectare	Are	Sqm.
(1)	(2)	(3)	(4)	(5)
Kanti Khas	1	00	23	12
	800	00	18	49
	799	00	20	80
	798	00	00	44
	797	00	18	99
	781	00	02	91
	796	00	08	75
	795	00	07	50
	847	00	05	31
	870	00	00	34
	871	0	55	24
	858	00	39	04
	859/4	00	54	13
	861/1	00	08	18

(1)	(2)	(3)	(4)	(5)
	860/1	00	08	19
	859/3/2	00	20	43
	862	00	01	44
	744/1	00	66	27
	865	00	01	65
	742	01	75	93
	741/1	00	03	64
	742/8	00	03	87
	740/3	00	00	10
	740/9	00	61	09
	740/8	00	15	20
	739	00	01	87
	735/3	00	24	93
	735/5/1	00	11	27
	738/1	00	01	37
	735/6/1	00	26	90
	735/1	00	42	48
	735/9	00	22	41
	734/1	00	01	75
	731/1/1	00	09	31
	732/1/2	00	45	73
	698	00	38	34
	726	00	00	09
	721	00	00	92
	706	00	14	25
	705	00	00	68
	707	00	08	07
	708	00	08	01
	711	00	12	14
	713	00	18	26
	728	00	00	94
	Total	09	10	77
Kanti Bhata	68	00	00	95
	235	00	20	66
	234	00	03	79
	232	00	07	21
	236	00	00	24
	238	00	15	33
	242	00	00	54
	230	00	23	83
	243	00	15	33
	244/1	00	04	31
	244	00	24	82
	244/4	00	12	12
	247	00	16	36
	153/1/1	00	40	95
	153	00	39	43
	153/1/3	00	03	16
	95	00	01	99
	128	00	21	27
	127/2/2	00	00	09
	126	00	23	99
	124	00	00	54
	123	00	30	61
	121	00	07	67
	122	00	20	10
	110	00	55	37
	127	00	13	10
	Total	04	03	76

(1)	(2)	(3)	(4)	(5)
Bandhiya	54	00	14	28
	65	00	16	89
	64	00	26	61
	63	00	37	19
	58	00	00	03
	60	00	40	96
	61	00	00	50
	1	00	04	96
	48	00	00	98
	51	00	33	67
	40/1/3	00	64	43
	40/1/8	00	16	62
	40/1/9	00	42	05
	39	00	02	49
	30	00	51	86
	25	00	02	60
	24	00	00	08
	18	00	09	75
	6	00	03	53
	15	00	21	20
	14	00	01	64
	8	00	00	85
	13	00	10	80
	11	00	02	82
	Total	04	06	79

[F. No. R-11024(14)/1/2019-OR-I/E-29468]

SANTANU DHAR, Under Secy.

नई दिल्ली, 17 जून, 2019

का.आ. 987.—केन्द्रीय सरकार को, ऐसा प्रतीत होता है कि लोकहित में यह आवश्यक है कि मध्य प्रदेश एवं उत्तर प्रदेश राज्य में पेट्रोलियम पदार्थों के परिवहन के लिए बीना पंकी (कानपुर) पाइपलाइन परियोजना के क्रियान्वयन हेतु भारत पेट्रोलियम कॉर्पोरेशन लिमिटेड द्वारा पाइपलाइन बिछाई जाना आवश्यक है।

केन्द्रीय सरकार को ऐसी पाइपलाइन बिछाने के प्रयोजन के लिये यह आवश्यक प्रतीत होता है, कि ऐसी भूमि में जो इस से उपावद्ध अनुसूची में वर्णित है, और जिसमें उक्त पाइपलाइन बिछाई जाने का प्रस्ताव है, उपयोग के अधिकार का अर्जन किया जाए।

अतः अब, केन्द्रीय सरकार, पेट्रोलियम और खजिन पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम 1962 (1962 का 50) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उस भूमि में उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा करती है।

कोई व्यक्ति जो उक्त अनुसूची में वर्णित भूमि में हितबद्ध है, उस तारीख से, जिसको इस अधिसूचना में युक्त भारत के राजपत्र की प्रतियां साधारण जनता को उपलब्ध करा दी जाती है, इक्कीस दिन के भीतर, भूमि के नीचे पाइपलाइन बिछाए जाने के लिए उसमें उपयोग के अधिकार के संबन्ध में श्री किरोडीलाल मीणा अनुविभागीय अधिकारी (राजस्व) बीना जिला सागर मध्य प्रदेश सक्षम प्राधिकारी, भारत पेट्रोलियम कॉर्पोरेशन लिमिटेड बीना पंकी (कानपुर) पेट्रोलियम पाइपलाइन परियोजना कार्यालय, प्रथम तल, ताप्ति कॉम्प्लेक्स, अगासोद पुलिस स्टेशन के पास, बी.ओ.आर.एल. आवासीय परिसर, बीना, जिला-सागर (म.प्र.) - 470124 को लिखित रूप से आक्षेप भेज सकेगा।

अनुसूची
तहसील- लिघौरा जिला-टीकमगढ़ राज्य-मध्य प्रदेश

गाँव का नाम	सर्वे नं. /गाटा नं.	क्षेत्रफल		
		हैक्टेयर	एयर	वर्गमीटर

(1)	(2)	(3)	(4)	(5)
विरऊ	1845	00	00	19
	1618	00	09	76
	1840/4	00	21	28
	1840/2	00	51	96
	1840/3	00	01	04
	1833अ	00	02	20
	1833	00	06	82
	1832	00	01	59
	1827/1	00	52	23
	1828	00	00	04
	1945	00	07	73
	1944	00	12	52
	1943	00	00	93
	1942	00	00	02
	Total	01	68	31
मटोल	816/2	00	28	45
	815	00	18	08
	814	00	02	52
	812	00	17	41
	816/1	00	33	71
	819/1	00	03	32
	807	00	04	53
	795	00	07	23
	801	00	15	19
	799	00	09	84
	796	00	13	30
	792	00	00	02
	793	00	40	49
	778/3	00	17	26
	778	00	65	68
	778/4/1	00	02	37

(1)	(2)	(3)	(4)	(5)
	514	00	72	86
	777/2	00	55	17
	774	00	12	29
	773	00	00	04
	767	00	34	06
	952	00	02	42
	956	00	26	76
	766	00	17	20
	764	00	15	46
	763	00	15	40
	761	00	00	15
	743	00	83	35
	744	00	04	20
	745/1	00	05	01
	746/1	00	61	82
	746/4	00	13	97
	746/5/1	00	23	67
	746/3	00	78	80
	747	00	00	35
	752/3/1	00	00	84
	750	00	16	72
	749	00	04	79
	748	00	13	67
	Total	08	38	40
सतगुवां उगड	207	00	20	48
	208	00	00	52
	209	00	02	88
	210	00	05	89
	211	00	03	89
	213	00	12	55
	214	00	05	69
	201/2	00	05	69
	215	00	04	81
	202	00	00	02
	201/1	00	00	20

(1)	(2)	(3)	(4)	(5)
	200	00	21	91
	197	00	00	09
	199	00	05	59
	198	00	23	10
	185	00	02	78
	186	00	10	93
	172	00	12	13
	183	00	34	66
	171	00	00	08
	173	00	06	25
	175	00	11	35
	182	00	00	10
	177	00	01	62
	174	00	06	29
	181	00	02	67
	495	00	14	21
	180	00	08	26
	494	00	01	00
	493	00	04	33
	492	00	00	06
	491	00	00	09
	259	00	17	11
	490	00	14	61
	489	00	03	68
	474	00	10	48
	477	00	12	94
	478	00	01	44
	479	00	08	32
	475	00	05	92
	473	00	03	82
	102	00	18	31
	101	00	07	25
	447	00	06	62
	100	00	04	39
	98	00	03	10

(1)	(2)	(3)	(4)	(5)
	95	00	04	52
	96	00	09	75
	91	00	02	56
	90	00	01	06
	89	00	05	00
	83	00	05	15
	86	00	00	02
	85	00	03	82
	84	00	05	12
	73	00	05	00
	72	00	01	46
	71	00	01	69
	70	00	01	36
	69	00	01	06
	67	00	10	38
	66	00	03	88
	56	00	00	17
	25	00	00	12
	55	00	00	01
	57	00	01	58
	26	00	04	91
	27	00	00	19
	54	00	18	68
	50	00	00	36
	49	00	03	82
	39	00	14	76
	471	00	04	15
	470	00	02	73
	441	00	14	33
	442	00	10	19
	41	00	06	76
	Total	04	92	70
सतगुर्वां खास	1388	00	02	86
	1389	00	29	36
	1390	00	17	18

(1)	(2)	(3)	(4)	(5)
	1407	00	02	19
	1406	00	08	74
	1391	00	08	29
	1392	00	07	24
	1404	00	01	00
	1394	00	08	77
	1397	00	03	64
	1395	00	05	05
	1438	00	00	10
	1396	00	07	60
	1398	00	00	11
	1437	00	10	08
	1436	00	01	80
	1435	00	00	79
	1440	00	07	49
	1441	00	07	86
	1443	00	04	34
	1442	00	02	50
	1444	00	04	71
	1446	00	08	89
	1447/2	00	02	62
	1447/3	00	07	47
	1448	00	05	08
	1315	00	00	94
	1314	00	12	24
	1313	00	00	52
	1312	00	08	28
	1311	00	00	01
	1310	00	10	56
	1309	00	05	70
	1300	00	00	41
	1301	00	01	23
	1302	00	02	14
	1303	00	11	94
	1304	00	03	56

(1)	(2)	(3)	(4)	(5)
	1305	00	01	14
	1289	00	07	57
	1281	00	12	35
	1283	00	07	23
	1282	00	07	90
	1518	00	10	68
	1519	00	07	23
	1520	00	04	05
	1517	00	17	25
	1516	00	30	76
	1514	00	06	89
	1507	00	00	01
	1561	00	32	08
	1560	00	00	01
	1522	00	01	51
	1555	00	01	63
	1556	00	12	77
	1557	00	00	38
	1554	00	04	35
	1553	00	18	30
	1552	00	05	26
	1572	00	06	59
	1550	00	04	49
	1574	00	01	43
	1057	00	00	04
	1055	00	04	68
	1056	00	04	14
	1054	00	02	01
	1053	00	00	20
	1052	00	01	27
	1050	00	06	47
	1051	00	02	51
	1046	00	05	27
	1049	00	01	65
	1048	00	00	13

(1)	(2)	(3)	(4)	(5)
	1047	00	07	76
	1027	00	00	66
	1028	00	06	97
	1034	00	01	42
	1033	00	02	00
	1029	00	00	18
	1032	00	04	64
	1031	00	06	38
	1030	00	05	06
	1013	00	09	10
	1012	00	07	30
	1008	00	06	36
	1006	00	11	74
	1007	00	18	08
	1011	00	00	43
	928	00	01	99
	855	00	11	79
	882	00	03	69
	881	00	02	75
	867	00	03	45
	884	00	00	03
	880	00	01	30
	869	00	01	58
	879	00	02	29
	878	00	02	10
	870	00	01	90
	871	00	02	48
	819	00	01	22
	872	00	07	31
	873	00	03	85
	818	00	00	74
	874	00	02	85
	810	00	14	46
	811	00	00	08
	805	00	07	06

(1)	(2)	(3)	(4)	(5)
	812	00	00	19
	799	00	10	89
	800	00	06	32
	803	00	00	10
	802	00	00	51
	4219/4603	00	02	64
	801	00	00	80
	791	00	00	04
	794	00	00	01
	793	00	02	73
	792	00	12	91
	789	00	05	87
	788	00	10	06
	708	00	00	63
	787	00	04	68
	762	00	01	99
	714	00	00	02
	760	00	07	18
	761	00	01	93
	759	00	06	43
	754	00	04	02
	753	00	02	63
	758	00	00	66
	757	00	00	03
	751	00	02	25
	752	00	03	66
	755	00	05	20
	719	00	22	98
	728	00	01	76
	720	00	01	02
	721	00	02	14
	727	00	14	19
	726	00	13	82
	2315	00	01	65
	2316	00	00	30

(1)	(2)	(3)	(4)	(5)
	725	00	00	29
	2317	00	07	51
	2318	00	10	30
	2347	00	09	05
	2346	00	05	38
	2321	00	00	31
	2349	00	03	18
	2350	00	00	45
	2345	00	05	90
	2344	00	18	28
	2428	00	11	76
	2432	00	00	02
	2431	00	01	91
	2430	00	01	70
	2429	00	01	59
	2427	00	03	63
	2426	00	04	47
	2425	00	05	23
	2416	00	01	19
	2455	00	00	04
	2456	00	01	14
	2457	00	02	04
	2458	00	06	57
	2414	00	00	31
	2413	00	08	61
	2459	00	02	50
	2462	00	00	31
	2463	00	09	86
	2478	00	07	12
	2480	00	00	13
	2479	00	03	88
	2477	00	00	18
	2488	00	00	18
	2489	00	01	46

(1)	(2)	(3)	(4)	(5)
	2487	00	00	83
	2481	00	02	21
	2486	00	00	68
	2490	00	07	87
	2491	00	07	59
	2492	00	06	13
	2494	00	04	94
	2495	00	04	21
	2496	00	02	58
	2501	00	02	51
	2502	00	07	37
	2512	00	00	16
	2511	00	02	69
	2510	00	06	78
	2509	00	01	15
	2508	00	00	03
	2541	00	01	64
	2397	00	08	33
	Total	09	70	94
रूपगंज	266	00	06	61
	270	00	14	69
	271	00	05	55
	280	00	08	01
	276	00	00	20
	281	00	01	81
	282	00	00	17
	278	00	02	22
	279	00	04	49
	294	00	00	88
	295	00	07	20
	309	00	00	13
	301	00	04	72
	302	00	02	93
	308	00	01	13
	307	00	00	04

(1)	(2)	(3)	(4)	(5)
	305	00	01	41
	303	00	02	39
	304	00	01	28
	306	00	04	07
	331	00	03	84
	321	00	00	10
	322	00	04	02
	323	00	01	97
	330	00	00	03
	329	00	00	05
	983	00	01	88
	324	00	00	65
	326	00	01	87
	327	00	02	41
	328	00	03	25
	217	00	01	94
	216	00	01	48
	215	00	00	67
	214	00	00	04
	368/1003	00	10	29
	368	00	03	15
	373	00	04	68
	368/1004	00	00	16
	371	00	08	51
	369	00	03	57
	372	00	00	18
	370	00	10	03
	406	00	17	35
	416	00	02	01
	415	00	01	81
	407	00	01	43
	408/2	00	00	31
	408/1	00	00	02
	410	00	01	79
	414	00	30	78

(1)	(2)	(3)	(4)	(5)
	432	00	10	15
	508	00	01	68
	504	00	05	45
	490	00	05	77
	499	00	06	35
	497	00	08	06
	491	00	06	01
	496	00	01	71
	492	00	09	12
	493	00	01	65
	482	00	06	21
	480	00	04	22
	479	00	16	19
	477	00	07	32
	478	00	11	31
	476	00	04	36
	726	00	01	80
	725	00	00	29
	727	00	02	83
	728	00	05	14
	729	00	02	63
	730	00	03	50
	731	00	00	26
	733	00	02	75
	735	00	02	25
	734	00	01	17
	736	00	03	20
	737	00	02	02
	740	00	01	41
	741	00	02	00
	742	00	03	77
	743	00	05	24
	762	00	16	29
	768	00	16	71
	763	00	00	28

(1)	(2)	(3)	(4)	(5)
	764	00	00	87
	765	00	01	81
	766	00	03	05
	767	00	06	39
	Total	03	81	42
फतेह का खिरक	233	00	02	29
	238	00	06	11
	239	00	00	19
	237	00	05	26
	236	00	11	19
	235	00	12	89
	252	00	00	65
	254	00	07	05
	253	00	01	96
	274	00	10	99
	257	00	00	27
	271	00	14	05
	272	00	00	34
	270	00	06	36
	269	00	06	25
	266	00	00	65
	265	00	12	88
	264	00	02	50
	282	00	16	20
	283	00	00	70
	290	00	03	95
	291	00	02	41
	292	00	03	74
	301	00	00	26
	300	00	01	08
	561	00	11	21
	299	00	03	42
	295	00	00	87
	306	00	00	03
	308	00	13	24

(1)	(2)	(3)	(4)	(5)
	309	00	04	60
	310	00	00	03
	313	00	07	48
	311	00	00	52
	586	00	00	73
	312	00	02	74
	314	00	05	60
	315	00	08	10
	316	00	00	20
	362	00	04	23
	437	00	29	89
	440	00	00	05
	438	00	02	90
	439	00	12	35
	431	00	16	33
	430	00	41	55
	428	00	14	04
	427	00	16	04
	426	00	00	51
	425	00	08	51
	595	00	23	24
	418	00	32	57
	Total	03	91	20
पैतपुरा	31	00	31	22
	23	00	24	47
	24	00	02	46
	22	00	44	54
	21	00	00	26
	19	00	02	67
	12	00	08	86
	10	00	01	06
	11	00	32	68
	5/4	00	06	88
	14	00	63	45
	14/1/1	00	09	56

(1)	(2)	(3)	(4)	(5)
	Total	02	28	11
चन्देरा उगड	134	00	28	56
	TOTAL	00	28	56
चन्देरा खास	2485/5	00	45	29
	2485/1	00	05	38
	2485/3	00	16	13
	2485/4	00	00	76
	2484	00	36	40
	2184	00	62	63
	2983	00	27	66
	2189/1	00	21	87
	2189/3	00	02	68
	2188	00	06	36
	2187	00	07	09
	2136	00	05	77
	2192	00	27	41
	2193	00	26	17
	2978	00	01	33
	2194	00	15	19
	2196	00	19	08
	2197	00	01	34
	2198/2983	00	07	80
	2198/2977	00	02	46
	2199	00	03	03
	2200	00	21	95
	2239	00	38	77
	2240	00	00	46
	2241	00	00	07
	2244	00	18	47
	2246	00	02	86
	2249	00	02	20
	2250	00	24	92
	2259	00	05	88
	2260	00	01	53
	2106	00	00	07

(1)	(2)	(3)	(4)	(5)
	2262	00	17	64
	2261	00	02	32
	2030	00	03	71
	2031	00	27	47
	2029	00	01	17
	2028	00	03	04
	2025	00	02	77
	2027	00	01	38
	2026	00	01	32
	2023	00	02	41
	2024	00	01	50
	2022	00	02	07
	2019	00	01	37
	2020/2973	00	01	20
	2021	00	07	07
	2002	00	10	02
	2001	00	11	28
	2000	00	03	68
	1999	00	05	05
	1990	00	08	29
	1989	00	00	49
	1992	00	06	12
	1991	00	04	28
	1994	00	00	43
	1993	00	01	77
	1987	00	01	66
	1995	00	09	99
	1985	00	04	81
	311	00	05	87
	1984	00	00	68
	312	00	06	21
	320	00	04	32
	319	00	09	63
	328	00	03	09
	318	00	04	13

(1)	(2)	(3)	(4)	(5)
	329	00	01	50
	330	00	05	76
	331	00	07	07
	338	00	03	70
	326	00	00	96
	332	00	08	09
	336	00	00	03
	335	00	00	15
	334	00	19	87
	357	00	19	68
	356	00	01	24
	355	00	03	35
	354	00	00	02
	353	00	01	37
	360	00	06	81
	361	00	18	59
	209	00	03	24
	208	00	11	98
	181	00	20	25
	180	00	02	59
	179	00	01	48
	178	00	22	32
	176	00	11	80
	175	00	28	85
	49	00	09	43
	2847	00	04	18
	45	00	01	58
	48	00	01	63
	47	00	00	81
	46	00	05	45
	44	00	01	51
	43	00	03	72
	39	00	06	45
	42	00	05	04
	41	00	08	17

(1)	(2)	(3)	(4)	(5)
	40	00	08	65
	2857	00	04	95
	38	00	17	56
	36	00	03	44
	27	00	15	43
	26	00	00	07
	28	00	01	06
	20	00	20	05
	19	00	00	03
	16	00	01	47
	18	00	06	92
	17	00	02	23
	13	00	02	53
	14	00	14	89
	15	01	51	36
	2841	00	33	14
	434	00	03	12
	Total	11	72	82
चन्देरा भरवारा	144	00	05	88
	131	00	10	68
	133	00	27	36
	134	00	40	05
	122	00	02	90
	123	00	06	01
	121	00	03	16
	92	00	05	00
	120	00	07	62
	119	00	00	01
	93	00	23	84
	118	00	01	97
	94	00	14	99
	117	00	05	49
	100	00	17	44
	99	00	15	30
	101	00	03	63

(1)	(2)	(3)	(4)	(5)
	42	00	00	06
	41	00	33	65
	38	00	22	74
	39	00	10	91
	32	00	58	72
	33	00	01	02
	162	00	29	54
	163/1	00	17	98
	165	00	17	00
	Total	03	82	95
भगवंत सिंह का खिरक	31/2/1	00	53	07
	31/2/2क	00	26	77
	31/2/2ग	00	06	19
	31/2/1ख	00	06	41
	33/2/1अ	00	33	94
	33/2/2	00	41	02
	31/2/3क	00	23	03
	31/2/3ख	00	10	60
	34/2	00	31	74
	34/1/1	00	34	41
	Total	02	67	18
स्यावनी उगड	32	00	85	64
	9	00	66	30
	5	00	14	05
	4	00	04	74
	3	01	50	65
	Total	03	21	38
स्यावनी खास	1382/3	00	19	34
	1382/4	00	45	62
	1397	00	05	07
	1391	00	33	22
	1392	00	12	94
	1393	00	18	09
	1394	00	43	30
	Total	01	77	58

(1)	(2)	(3)	(4)	(5)
मानपुरा	48	00	12	57
	47	00	13	74
	44	00	35	03
	204	00	24	73
	50	00	62	54
	43	00	21	60
	205	00	23	09
	206	00	15	21
	65	00	03	88
	66	00	00	15
	56	00	00	02
	64	00	15	69
	63	00	01	56
	67	00	09	53
	68	00	06	94
	207	00	13	56
	69	00	05	62
	75	00	39	40
	221	00	01	90
	220	00	14	59
	219	00	14	46
	128	00	08	09
	127	01	44	83
	91	01	00	89
	Total	05	89	62
मैंदवारा	2412	00	19	68
	2411	00	42	92
	2414	00	27	66
	2415	00	25	84
	2416	00	00	98
	2417	00	01	96
	2418	00	00	30
	2421	00	16	72
	2420	00	09	45
	2422	00	14	33

(1)	(2)	(3)	(4)	(5)
	2429	00	32	02
	2432	00	08	10
	2431	00	20	83
	2323	00	17	22
	2434	00	04	44
	2322	00	30	51
	2321	00	02	79
	2320	00	35	09
	2315	00	13	33
	2316	00	04	33
	2317	00	01	20
	2314	00	28	19
	2313	00	00	57
	2312	00	01	32
	2311	00	13	21
	2296	00	11	61
	2298	00	00	10
	2297	00	35	49
	2299	00	01	12
	2292	00	01	22
	2286	00	01	56
	2285	00	26	72
	2284	00	18	84
	2265	00	32	88
	2266	00	00	01
	2264	00	06	81
	2256	00	03	47
	2250	00	36	19
	2249	00	00	33
	2251	00	38	45
	2253	00	06	09
	2252	00	23	19
	2230	00	21	68
	2226	00	23	83
	2227	00	24	02

(1)	(2)	(3)	(4)	(5)
	2219	00	09	38
	2220	00	11	27
	2221	00	14	11
	2222	00	01	67
	2180	00	01	13
	2098	00	00	15
	2097	00	20	11
	2105	00	83	97
	2106	00	22	27
	2125	00	16	73
	2126	00	15	80
	2127	00	00	99
	2128	00	25	59
	2129	00	13	13
	247	00	13	86
	248	00	22	35
	250	00	01	29
	249	00	16	66
	251	00	02	84
	257	00	08	27
	252	00	05	49
	253	00	16	84
	256	00	12	20
	254	00	12	07
	255	00	01	83
	238	00	14	27
	204	00	04	47
	203	00	40	52
	202	00	40	96
	174	00	18	37
	175	00	11	06
	177	00	13	25
	178	00	10	03
	170	00	03	54
	184	00	22	21

(1)	(2)	(3)	(4)	(5)
	185	00	00	14
	166	00	53	12
	165	00	18	37
	Total	12	86	91
विजरावन	584	00	00	65
	587	00	03	20
	588	00	07	40
	623	00	04	08
	624	00	17	80
	625	00	05	51
	626	00	07	87
	622	00	00	80
	621	00	00	20
	628	00	00	54
	643	00	01	67
	627	00	08	68
	638	00	01	49
	642	00	07	41
	639	00	00	31
	641	00	02	02
	640	00	01	21
	644	00	00	77
	646	00	04	51
	645	00	10	42
	662	00	01	81
	660	00	00	51
	661	00	06	90
	668	00	06	92
	667	00	08	75
	669	00	00	67
	666	00	00	66
	671	00	08	01
	672	00	01	00
	673	00	11	20
	674	00	01	12

(1)	(2)	(3)	(4)	(5)
	563	00	03	45
	513	00	00	09
	512	00	12	83
	514	00	19	75
	511	00	22	04
	506	00	18	67
	507	00	01	11
	494	00	30	09
	508	00	02	44
	492	00	26	88
	491	00	22	19
	490	00	12	90
	752	00	01	28
	733	00	01	27
	704	00	01	73
	705	00	24	01
	702	00	01	49
	701	00	00	32
	700	00	00	10
	712	00	10	79
	711	00	21	69
	721	00	06	14
	722	00	12	81
	949	00	18	12
	946	00	00	52
	948	00	02	61
	947	00	11	31
	941	00	00	82
	965	00	14	02
	969	00	17	28
	968	00	00	41
	972	00	15	98
	970	00	08	48
	975	00	00	48
	974	00	19	70

(1)	(2)	(3)	(4)	(5)
	928	00	07	54
	929	00	06	72
	791	00	06	96
	792	00	02	05
	793	00	24	02
	794	00	01	40
	795	00	13	34
	912	00	01	18
	796	00	17	38
	797	00	11	24
	858	00	06	21
	898	00	02	04
	896	00	01	61
	859	00	05	73
	860	00	05	36
	861	00	06	66
	862	00	01	25
	863	00	19	55
	864	00	15	69
	846	00	01	80
	865	00	07	59
	866	00	07	48
	868	00	14	16
	844	00	00	05
	843	00	17	40
	869	00	00	19
	874	00	01	77
	875	00	04	02
	876	00	49	48
	Total	07	57	76
हरकनपुरा	1108	00	16	74
	1109	00	38	39
	1111	00	01	46
	1112	00	01	26
	1113	00	00	53

(1)	(2)	(3)	(4)	(5)
	1125	00	14	32
	1126	00	20	46
	1128	00	11	31
	1087	00	01	97
	1147	00	37	08
	1083	00	20	75
	1082	00	11	91
	1004	00	27	83
	1006	00	03	24
	1008	00	04	61
	1007	00	33	61
	1023	00	08	26
	1054	00	01	01
	1025	00	03	75
	1024	00	06	54
	1019	00	31	83
	515	00	30	25
	1030	00	09	72
	514	00	02	00
	476	00	08	32
	485	00	10	78
	484	00	02	68
	477	00	01	10
	483	00	02	77
	478	00	00	92
	482	00	19	52
	481	00	04	92
	Total	03	89	84
उपरारा चक-1	283	00	14	95
	284	00	24	87
	334	00	02	43
	333	00	02	22
	332	00	22	73
	330	00	23	19
	323	00	08	75

(1)	(2)	(3)	(4)	(5)
	321	00	74	24
	319	00	11	62
	318	00	10	48
	317	00	09	14
	305	00	34	98
	Total	02	39	60

[फा. सं. आर-11024(14)/1/2019-ओआर-I/ई-29468]

शान्तनु धर, अवर सचिव

New Delhi, the 17th June, 2019

S.O. 987.—Whereas, it appears to the Central Government, that it is necessary in the public Interest that for the transportation of the Petroleum Product in the state of Madhya Pradesh and Uttar Pradesh Pipeline Should be laid for implementing of Bina-Panki (Kanpur) Pipeline Project by the Bharat Petroleum Corporation Limited.

And Whereas, it appears to the Central Government that for the purpose of laying the said pipeline, It is necessary to acquire the right of user (ROU) in the land under which the said pipeline is proposed to be laid, and which is described in the Schedule annexed to this notification.

Now therefore, in exercise of the powers conferred by Sub section (1) of Section 3 of the petroleum and Minerals Pipeline (Acquisition of Right of user in Land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user there in.

Any person who is interested in the land described in the said schedule, may submit objection in writing to Shri Kirodi Lal Meena SDO (Revenue) Bina District Sagar Madhya Pradesh Competent Authority, Bharat Petroleum Corporation Limited, Bina Panki (Kanpur) Pipeline Project Office 1st Floor Tapti Complex , Near Agasod Police Station , BORL Residential Complex, Bina District Sagar, (M.P.) - 470124 within twenty one days from the date on which the copies of this notification Issued under Sub-section (1) of section 3 of the said Act, as published in the Gazette of India, are made available to the general public.

SCHEDULE**Tehsil : Lidhora****District : Tikamgarh****State: Madhya Pradesh**

Name of Village	Survey No. / Gata No.	Area		
		Hectare	Are	Sqm.
(1)	(2)	(3)	(4)	(5)
Virau	1845	00	00	19
	1618	00	09	76
	1840/4	00	21	28
	1840/2	00	51	96
	1840/3	00	01	04
	1833अ	00	02	20
	1833	00	06	82
	1832	00	01	59
	1827/1	00	52	23
	1828	00	00	04
	1945	00	07	73
	1944	00	12	52
	1943	00	00	93
	1942	00	00	02
	Total	01	68	31
Matol	816/2	00	28	45
	815	00	18	08

(1)	(2)	(3)	(4)	(5)
	814	00	02	52
	812	00	17	41
	816/1	00	33	71
	819/1	00	03	32
	807	00	04	53
	795	00	07	23
	801	00	15	19
	799	00	09	84
	796	00	13	30
	792	00	00	02
	793	00	40	49
	778/3	00	17	26
	778	00	65	68
	778/4/1	00	02	37
	514	00	72	86
	777/2	00	55	17
	774	00	12	29
	773	00	00	04
	767	00	34	06
	952	00	02	42
	956	00	26	76
	766	00	17	20
	764	00	15	46
	763	00	15	40
	761	00	00	15
	743	00	83	35
	744	00	04	20
	745/1	00	05	01
	746/1	00	61	82
	746/4	00	13	97
	746/5/1	00	23	67
	746/3	00	78	80
	747	00	00	35
	752/3/1	00	00	84
	750	00	16	72
	749	00	04	79
	748	00	13	67
	Total	08	38	40
Satgawan Ugad	207	00	20	48
	208	00	00	52
	209	00	02	88
	210	00	05	89
	211	00	03	89
	213	00	12	55
	214	00	05	69
	201/2	00	05	69
	215	00	04	81
	202	00	00	02
	201/1	00	00	20
	200	00	21	91
	197	00	00	09
	199	00	05	59
	198	00	23	10
	185	00	02	78
	186	00	10	93
	172	00	12	13
	183	00	34	66
	171	00	00	08

(1)	(2)	(3)	(4)	(5)
	173	00	06	25
	175	00	11	35
	182	00	00	10
	177	00	01	62
	174	00	06	29
	181	00	02	67
	495	00	14	21
	180	00	08	26
	494	00	01	00
	493	00	04	33
	492	00	00	06
	491	00	00	09
	259	00	17	11
	490	00	14	61
	489	00	03	68
	474	00	10	48
	477	00	12	94
	478	00	01	44
	479	00	08	32
	475	00	05	92
	473	00	03	82
	102	00	18	31
	101	00	07	25
	447	00	06	62
	100	00	04	39
	98	00	03	10
	95	00	04	52
	96	00	09	75
	91	00	02	56
	90	00	01	06
	89	00	05	00
	83	00	05	15
	86	00	00	02
	85	00	03	82
	84	00	05	12
	73	00	05	00
	72	00	01	46
	71	00	01	69
	70	00	01	36
	69	00	01	06
	67	00	10	38
	66	00	03	88
	56	00	00	17
	25	00	00	12
	55	00	00	01
	57	00	01	58
	26	00	04	91
	27	00	00	19
	54	00	18	68
	50	00	00	36
	49	00	03	82
	39	00	14	76
	471	00	04	15
	470	00	02	73
	441	00	14	33
	442	00	10	19
	41	00	06	76
	Total	04	92	70

(1)	(2)	(3)	(4)	(5)
Satguwan Khas	1388	00	02	86
	1389	00	29	36
	1390	00	17	18
	1407	00	02	19
	1406	00	08	74
	1391	00	08	29
	1392	00	07	24
	1404	00	01	00
	1394	00	08	77
	1397	00	03	64
	1395	00	05	05
	1438	00	00	10
	1396	00	07	60
	1398	00	00	11
	1437	00	10	08
	1436	00	01	80
	1435	00	00	79
	1440	00	07	49
	1441	00	07	86
	1443	00	04	34
	1442	00	02	50
	1444	00	04	71
	1446	00	08	89
	1447/2	00	02	62
	1447/3	00	07	47
	1448	00	05	08
	1315	00	00	94
	1314	00	12	24
	1313	00	00	52
	1312	00	08	28
	1311	00	00	01
	1310	00	10	56
	1309	00	05	70
	1300	00	00	41
	1301	00	01	23
	1302	00	02	14
	1303	00	11	94
	1304	00	03	56
	1305	00	01	14
	1289	00	07	57
	1281	00	12	35
	1283	00	07	23
	1282	00	07	90
	1518	00	10	68
	1519	00	07	23
	1520	00	04	05
	1517	00	17	25
	1516	00	30	76
	1514	00	06	89
	1507	00	00	01
	1561	00	32	08
	1560	00	00	01
	1522	00	01	51
	1555	00	01	63
	1556	00	12	77
	1557	00	00	38
	1554	00	04	35
	1553	00	18	30

(1)	(2)	(3)	(4)	(5)
	1552	00	05	26
	1572	00	06	59
	1550	00	04	49
	1574	00	01	43
	1057	00	00	04
	1055	00	04	68
	1056	00	04	14
	1054	00	02	01
	1053	00	00	20
	1052	00	01	27
	1050	00	06	47
	1051	00	02	51
	1046	00	05	27
	1049	00	01	65
	1048	00	00	13
	1047	00	07	76
	1027	00	00	66
	1028	00	06	97
	1034	00	01	42
	1033	00	02	00
	1029	00	00	18
	1032	00	04	64
	1031	00	06	38
	1030	00	05	06
	1013	00	09	10
	1012	00	07	30
	1008	00	06	36
	1006	00	11	74
	1007	00	18	08
	1011	00	00	43
	928	00	01	99
	855	00	11	79
	882	00	03	69
	881	00	02	75
	867	00	03	45
	884	00	00	03
	880	00	01	30
	869	00	01	58
	879	00	02	29
	878	00	02	10
	870	00	01	90
	871	00	02	48
	819	00	01	22
	872	00	07	31
	873	00	03	85
	818	00	00	74
	874	00	02	85
	810	00	14	46
	811	00	00	08
	805	00	07	06
	812	00	00	19
	799	00	10	89
	800	00	06	32
	803	00	00	10
	802	00	00	51
	4219/4603	00	02	64
	801	00	00	80
	791	00	00	04

(1)	(2)	(3)	(4)	(5)
	794	00	00	01
	793	00	02	73
	792	00	12	91
	789	00	05	87
	788	00	10	06
	708	00	00	63
	787	00	04	68
	762	00	01	99
	714	00	00	02
	760	00	07	18
	761	00	01	93
	759	00	06	43
	754	00	04	02
	753	00	02	63
	758	00	00	66
	757	00	00	03
	751	00	02	25
	752	00	03	66
	755	00	05	20
	719	00	22	98
	728	00	01	76
	720	00	01	02
	721	00	02	14
	727	00	14	19
	726	00	13	82
	2315	00	01	65
	2316	00	00	30
	725	00	00	29
	2317	00	07	51
	2318	00	10	30
	2347	00	09	05
	2346	00	05	38
	2321	00	00	31
	2349	00	03	18
	2350	00	00	45
	2345	00	05	90
	2344	00	18	28
	2428	00	11	76
	2432	00	00	02
	2431	00	01	91
	2430	00	01	70
	2429	00	01	59
	2427	00	03	63
	2426	00	04	47
	2425	00	05	23
	2416	00	01	19
	2455	00	00	04
	2456	00	01	14
	2457	00	02	04
	2458	00	06	57
	2414	00	00	31
	2413	00	08	61
	2459	00	02	50
	2462	00	00	31
	2463	00	09	86
	2478	00	07	12
	2480	00	00	13
	2479	00	03	88

(1)	(2)	(3)	(4)	(5)
	2477	00	00	18
	2488	00	00	18
	2489	00	01	46
	2487	00	00	83
	2481	00	02	21
	2486	00	00	68
	2490	00	07	87
	2491	00	07	59
	2492	00	06	13
	2494	00	04	94
	2495	00	04	21
	2496	00	02	58
	2501	00	02	51
	2502	00	07	37
	2512	00	00	16
	2511	00	02	69
	2510	00	06	78
	2509	00	01	15
	2508	00	00	03
	2541	00	01	64
	2397	00	08	33
	Total	09	70	94
Roopganj	266	00	06	61
	270	00	14	69
	271	00	05	55
	280	00	08	01
	276	00	00	20
	281	00	01	81
	282	00	00	17
	278	00	02	22
	279	00	04	49
	294	00	00	88
	295	00	07	20
	309	00	00	13
	301	00	04	72
	302	00	02	93
	308	00	01	13
	307	00	00	04
	305	00	01	41
	303	00	02	39
	304	00	01	28
	306	00	04	07
	331	00	03	84
	321	00	00	10
	322	00	04	02
	323	00	01	97
	330	00	00	03
	329	00	00	05
	983	00	01	88
	324	00	00	65
	326	00	01	87
	327	00	02	41
	328	00	03	25
	217	00	01	94
	216	00	01	48
	215	00	00	67
	214	00	00	04
	368/1003	00	10	29

(1)	(2)	(3)	(4)	(5)
	368	00	03	15
	373	00	04	68
	368/1004	00	00	16
	371	00	08	51
	369	00	03	57
	372	00	00	18
	370	00	10	03
	406	00	17	35
	416	00	02	01
	415	00	01	81
	407	00	01	43
	408/2	00	00	31
	408/1	00	00	02
	410	00	01	79
	414	00	30	78
	432	00	10	15
	508	00	01	68
	504	00	05	45
	490	00	05	77
	499	00	06	35
	497	00	08	06
	491	00	06	01
	496	00	01	71
	492	00	09	12
	493	00	01	65
	482	00	06	21
	480	00	04	22
	479	00	16	19
	477	00	07	32
	478	00	11	31
	476	00	04	36
	726	00	01	80
	725	00	00	29
	727	00	02	83
	728	00	05	14
	729	00	02	63
	730	00	03	50
	731	00	00	26
	733	00	02	75
	735	00	02	25
	734	00	01	17
	736	00	03	20
	737	00	02	02
	740	00	01	41
	741	00	02	00
	742	00	03	77
	743	00	05	24
	762	00	16	29
	768	00	16	71
	763	00	00	28
	764	00	00	87
	765	00	01	81
	766	00	03	05
	767	00	06	39
	Total	03	81	42
Fateh Ka Khirak	233	00	02	29
	238	00	06	11
	239	00	00	19

(1)	(2)	(3)	(4)	(5)
	237	00	05	26
	236	00	11	19
	235	00	12	89
	252	00	00	65
	254	00	07	05
	253	00	01	96
	274	00	10	99
	257	00	00	27
	271	00	14	05
	272	00	00	34
	270	00	06	36
	269	00	06	25
	266	00	00	65
	265	00	12	88
	264	00	02	50
	282	00	16	20
	283	00	00	70
	290	00	03	95
	291	00	02	41
	292	00	03	74
	301	00	00	26
	300	00	01	08
	561	00	11	21
	299	00	03	42
	295	00	00	87
	306	00	00	03
	308	00	13	24
	309	00	04	60
	310	00	00	03
	313	00	07	48
	311	00	00	52
	586	00	00	73
	312	00	02	74
	314	00	05	60
	315	00	08	10
	316	00	00	20
	362	00	04	23
	437	00	29	89
	440	00	00	05
	438	00	02	90
	439	00	12	35
	431	00	16	33
	430	00	41	55
	428	00	14	04
	427	00	16	04
	426	00	00	51
	425	00	08	51
	595	00	23	24
	418	00	32	57
	Total	03	91	20
Petpura	31	00	31	22
	23	00	24	47
	24	00	02	46
	22	00	44	54
	21	00	00	26
	19	00	02	67
	12	00	08	86
	10	00	01	06

(1)	(2)	(3)	(4)	(5)
	11	00	32	68
	5/4	00	06	88
	14	00	63	45
	14/1/1	00	09	56
	Total	02	28	11
Chandera Ugad	134	00	28	56
	TOTAL	00	28	56
Chandera Khas	2485/5	00	45	29
	2485/1	00	05	38
	2485/3	00	16	13
	2485/4	00	00	76
	2484	00	36	40
	2184	00	62	63
	2983	00	27	66
	2189/1	00	21	87
	2189/3	00	02	68
	2188	00	06	36
	2187	00	07	09
	2136	00	05	77
	2192	00	27	41
	2193	00	26	17
	2978	00	01	33
	2194	00	15	19
	2196	00	19	08
	2197	00	01	34
	2198/2983	00	07	80
	2198/2977	00	02	46
	2199	00	03	03
	2200	00	21	95
	2239	00	38	77
	2240	00	00	46
	2241	00	00	07
	2244	00	18	47
	2246	00	02	86
	2249	00	02	20
	2250	00	24	92
	2259	00	05	88
	2260	00	01	53
	2106	00	00	07
	2262	00	17	64
	2261	00	02	32
	2030	00	03	71
	2031	00	27	47
	2029	00	01	17
	2028	00	03	04
	2025	00	02	77
	2027	00	01	38
	2026	00	01	32
	2023	00	02	41
	2024	00	01	50
	2022	00	02	07
	2019	00	01	37
	2020/2973	00	01	20
	2021	00	07	07
	2002	00	10	02
	2001	00	11	28
	2000	00	03	68
	1999	00	05	05

(1)	(2)	(3)	(4)	(5)
	1990	00	08	29
	1989	00	00	49
	1992	00	06	12
	1991	00	04	28
	1994	00	00	43
	1993	00	01	77
	1987	00	01	66
	1995	00	09	99
	1985	00	04	81
	311	00	05	87
	1984	00	00	68
	312	00	06	21
	320	00	04	32
	319	00	09	63
	328	00	03	09
	318	00	04	13
	329	00	01	50
	330	00	05	76
	331	00	07	07
	338	00	03	70
	326	00	00	96
	332	00	08	09
	336	00	00	03
	335	00	00	15
	334	00	19	87
	357	00	19	68
	356	00	01	24
	355	00	03	35
	354	00	00	02
	353	00	01	37
	360	00	06	81
	361	00	18	59
	209	00	03	24
	208	00	11	98
	181	00	20	25
	180	00	02	59
	179	00	01	48
	178	00	22	32
	176	00	11	80
	175	00	28	85
	49	00	09	43
	2847	00	04	18
	45	00	01	58
	48	00	01	63
	47	00	00	81
	46	00	05	45
	44	00	01	51
	43	00	03	72
	39	00	06	45
	42	00	05	04
	41	00	08	17
	40	00	08	65
	2857	00	04	95
	38	00	17	56
	36	00	03	44
	27	00	15	43
	26	00	00	07
	28	00	01	06

(1)	(2)	(3)	(4)	(5)
	20	00	20	05
	19	00	00	03
	16	00	01	47
	18	00	06	92
	17	00	02	23
	13	00	02	53
	14	00	14	89
	15	01	51	36
	2841	00	33	14
	434	00	03	12
	Total	11	72	82
Chandera Bharwara	144	00	05	88
	131	00	10	68
	133	00	27	36
	134	00	40	05
	122	00	02	90
	123	00	06	01
	121	00	03	16
	92	00	05	00
	120	00	07	62
	119	00	00	01
	93	00	23	84
	118	00	01	97
	94	00	14	99
	117	00	05	49
	100	00	17	44
	99	00	15	30
	101	00	03	63
	42	00	00	06
	41	00	33	65
	38	00	22	74
	39	00	10	91
	32	00	58	72
	33	00	01	02
	162	00	29	54
	163/1	00	17	98
	165	00	17	00
	Total	03	82	95
Bhagwantsingh Ka Khirak	31/2/1	00	53	07
	31/2/2क	00	26	77
	31/2/2ग	00	06	19
	31/2/1ख	00	06	41
	33/2/1अ	00	33	94
	33/2/2	00	41	02
	31/2/3क	00	23	03
	31/2/3ख	00	10	60
	34/2	00	31	74
	34/1/1	00	34	41
	Total	02	67	18
Syawani Ugad	32	00	85	64
	9	00	66	30
	5	00	14	05
	4	00	04	74
	3	01	50	65
	Total	03	21	38

(1)	(2)	(3)	(4)	(5)
Syawani Khas	1382/3	00	19	34
	1382/4	00	45	62
	1397	00	05	07
	1391	00	33	22
	1392	00	12	94
	1393	00	18	09
	1394	00	43	30
	Total	01	77	58
Manpura	48	00	12	57
	47	00	13	74
	44	00	35	03
	204	00	24	73
	50	00	62	54
	43	00	21	60
	205	00	23	09
	206	00	15	21
	65	00	03	88
	66	00	00	15
	56	00	00	02
	64	00	15	69
	63	00	01	56
	67	00	09	53
	68	00	06	94
	207	00	13	56
	69	00	05	62
	75	00	39	40
	221	00	01	90
	220	00	14	59
	219	00	14	46
	128	00	08	09
	127	01	44	83
	91	01	00	89
	Total	05	89	62
Maindwara	2412	00	19	68
	2411	00	42	92
	2414	00	27	66
	2415	00	25	84
	2416	00	00	98
	2417	00	01	96
	2418	00	00	30
	2421	00	16	72
	2420	00	09	45
	2422	00	14	33
	2429	00	32	02
	2432	00	08	10
	2431	00	20	83
	2323	00	17	22
	2434	00	04	44
	2322	00	30	51
	2321	00	02	79
	2320	00	35	09
	2315	00	13	33
	2316	00	04	33
	2317	00	01	20
	2314	00	28	19
	2313	00	00	57
	2312	00	01	32
	2311	00	13	21

(1)	(2)	(3)	(4)	(5)
	2296	00	11	61
	2298	00	00	10
	2297	00	35	49
	2299	00	01	12
	2292	00	01	22
	2286	00	01	56
	2285	00	26	72
	2284	00	18	84
	2265	00	32	88
	2266	00	00	01
	2264	00	06	81
	2256	00	03	47
	2250	00	36	19
	2249	00	00	33
	2251	00	38	45
	2253	00	06	09
	2252	00	23	19
	2230	00	21	68
	2226	00	23	83
	2227	00	24	02
	2219	00	09	38
	2220	00	11	27
	2221	00	14	11
	2222	00	01	67
	2180	00	01	13
	2098	00	00	15
	2097	00	20	11
	2105	00	83	97
	2106	00	22	27
	2125	00	16	73
	2126	00	15	80
	2127	00	00	99
	2128	00	25	59
	2129	00	13	13
	247	00	13	86
	248	00	22	35
	250	00	01	29
	249	00	16	66
	251	00	02	84
	257	00	08	27
	252	00	05	49
	253	00	16	84
	256	00	12	20
	254	00	12	07
	255	00	01	83
	238	00	14	27
	204	00	04	47
	203	00	40	52
	202	00	40	96
	174	00	18	37
	175	00	11	06
	177	00	13	25
	178	00	10	03
	170	00	03	54
	184	00	22	21
	185	00	00	14
	166	00	53	12
	165	00	18	37

(1)	(2)	(3)	(4)	(5)
	Total	12	86	91
Vijrawan	584	00	00	65
	587	00	03	20
	588	00	07	40
	623	00	04	08
	624	00	17	80
	625	00	05	51
	626	00	07	87
	622	00	00	80
	621	00	00	20
	628	00	00	54
	643	00	01	67
	627	00	08	68
	638	00	01	49
	642	00	07	41
	639	00	00	31
	641	00	02	02
	640	00	01	21
	644	00	00	77
	646	00	04	51
	645	00	10	42
	662	00	01	81
	660	00	00	51
	661	00	06	90
	668	00	06	92
	667	00	08	75
	669	00	00	67
	666	00	00	66
	671	00	08	01
	672	00	01	00
	673	00	11	20
	674	00	01	12
	563	00	03	45
	513	00	00	09
	512	00	12	83
	514	00	19	75
	511	00	22	04
	506	00	18	67
	507	00	01	11
	494	00	30	09
	508	00	02	44
	492	00	26	88
	491	00	22	19
	490	00	12	90
	752	00	01	28
	733	00	01	27
	704	00	01	73
	705	00	24	01
	702	00	01	49
	701	00	00	32
	700	00	00	10
	712	00	10	79
	711	00	21	69
	721	00	06	14
	722	00	12	81
	949	00	18	12
	946	00	00	52
	948	00	02	61

(1)	(2)	(3)	(4)	(5)
	947	00	11	31
	941	00	00	82
	965	00	14	02
	969	00	17	28
	968	00	00	41
	972	00	15	98
	970	00	08	48
	975	00	00	48
	974	00	19	70
	928	00	07	54
	929	00	06	72
	791	00	06	96
	792	00	02	05
	793	00	24	02
	794	00	01	40
	795	00	13	34
	912	00	01	18
	796	00	17	38
	797	00	11	24
	858	00	06	21
	898	00	02	04
	896	00	01	61
	859	00	05	73
	860	00	05	36
	861	00	06	66
	862	00	01	25
	863	00	19	55
	864	00	15	69
	846	00	01	80
	865	00	07	59
	866	00	07	48
	868	00	14	16
	844	00	00	05
	843	00	17	40
	869	00	00	19
	874	00	01	77
	875	00	04	02
	876	00	49	48
	Total	07	57	76
Harkanpura	1108	00	16	74
	1109	00	38	39
	1111	00	01	46
	1112	00	01	26
	1113	00	00	53
	1125	00	14	32
	1126	00	20	46
	1128	00	11	31
	1087	00	01	97
	1147	00	37	08
	1083	00	20	75
	1082	00	11	91
	1004	00	27	83
	1006	00	03	24
	1008	00	04	61
	1007	00	33	61
	1023	00	08	26
	1054	00	01	01
	1025	00	03	75

(1)	(2)	(3)	(4)	(5)
	1024	00	06	54
	1019	00	31	83
	515	00	30	25
	1030	00	09	72
	514	00	02	00
	476	00	08	32
	485	00	10	78
	484	00	02	68
	477	00	01	10
	483	00	02	77
	478	00	00	92
	482	00	19	52
	481	00	04	92
	Total	03	89	84
Uparara Chak -1	283	00	14	95
	284	00	24	87
	334	00	02	43
	333	00	02	22
	332	00	22	73
	330	00	23	19
	323	00	08	75
	321	00	74	24
	319	00	11	62
	318	00	10	48
	317	00	09	14
	305	00	34	98
	Total	02	39	60

[F. No. R-11024(14)/1/2019-OR-I/E-29468]

SANTANU DHAR, Under Secy.

नई दिल्ली, 17 जून, 2019

का.आ. 988.—केन्द्रीय सरकार को, ऐसा प्रतीत होता है कि लोकहित में यह आवश्यक है कि मध्य प्रदेश एवं उत्तर प्रदेश राज्य में पेट्रोलियम पदार्थों के परिवहन के लिए बीना पंकी (कानपुर) पाइपलाइन परियोजना के क्रियान्वयन हेतु भारत पेट्रोलियम कॉर्पोरेशन लिमिटेड द्वारा पाइपलाइन बिछाई जाना आवश्यक है।

केन्द्रीय सरकार को ऐसी पाइपलाइन बिछाने के प्रयोजन के लिये यह आवश्यक प्रतीत होता है, कि ऐसी भूमि में जो इस से उपाबद्ध अनुसूची में वर्णित है, और जिसमें उक्त पाइपलाइन बिछाई जाने का प्रस्ताव है, उपयोग के अधिकार का अर्जन किया जाए।

अतः अब, केन्द्रीय सरकार, पेट्रोलियम और खजिन पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम 1962 (1962 का 50) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उस भूमि में उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा करती है।

कोई व्यक्ति जो उक्त अनुसूची में वर्णित भूमि में हितवद्ध है, उस तारीख से, जिसको इस अधिसूचना में युक्त भारत के राजपत्र की प्रतियां साधारण जनता को उपलब्ध करा दी जाती है, इक्कीस दिन के भीतर, भूमि के नीचे पाइपलाइन बिछाए जाने के लिए उसमें उपयोग के अधिकार के संबंध में श्री किरोडीलाल मीणा अनुविभागीय अधिकारी (राजस्व) बीना जिला सागर मध्य प्रदेश सक्षम प्राधिकारी, भारत पेट्रोलियम कॉर्पोरेशन लिमिटेड बीना पंकी (कानपुर) पेट्रोलियम पाइपलाइन परियोजना कार्यालय, प्रथम तल, तासि कॉम्प्लेक्स, अगासोद पुलिस स्टेशन के पास, बी.ओ.आर.एल. आवासीय परिसर, बीना, जिला-सागर (म.प्र.) - 470124 को लिखित रूप से आक्षेप भेज सकेगा।

अनुसूची

तहसील-बीना

जिला-सागर

राज्य-मध्य प्रदेश

गांव का नाम	सर्वे नं./गाटा नं.	क्षेत्रफल		
		हैक्टेयर	एयर	वर्गमीटर
(1)	(2)	(3)	(4)	(5)
आगासौद	519/1	01	31	86
	509/2	00	18	90
	507/2	00	43	37
	507/1	00	48	75
	506/1	00	00	47
	500/1	00	00	36
	508/1	00	02	24
	Total	02	45	95
देहरी	19	00	03	93
	203	00	02	63
	18/1	00	52	13
	18/4	00	00	08
	17/3	00	13	79
	17/2	00	11	54
	17/1	00	06	27
	16/1	00	55	09
	12	00	13	60
	11	00	88	57
	8/3	00	21	12
	9	00	54	63
	23/1	00	03	47
	35/1	00	28	95
	35/2	00	56	57
	34	00	12	33
	33	00	04	69
	51	00	42	51
	49	00	25	84
	46/2	00	71	79
	46/1	00	26	85
	61	00	03	00

(1)	(2)	(3)	(4)	(5)
	45	00	00	78
	72/2	00	05	22
	73	00	18	61
	79	00	22	15
	76	00	13	90
	77	00	08	57
	170	00	01	84
	86	00	11	30
	87	00	14	69
	88	00	16	88
	89	00	22	27
	90	00	05	67
	85	00	76	77
	94	00	16	98
	95	00	11	18
	96	00	01	96
	Total	08	48	15
सेमरखेडी	448/5	00	00	56
	455	00	00	40
	456	00	06	71
	443/2	00	03	39
	458	00	29	66
	457	00	01	76
	459	00	25	71
	463	00	29	11
	462	00	33	61
	464	00	02	05
	Total	01	32	96
कचनोदा	160	00	01	17
	159/2	00	48	02
	159/1	00	04	91
	162/1	00	00	91
	153	00	52	97
	152	00	24	48
	162/2	00	04	26

(1)	(2)	(3)	(4)	(5)
	151	00	38	80
	150	00	20	56
	147	00	08	42
	138/1	00	11	23
	139	00	21	60
	144	00	18	19
	141	00	06	11
	82	00	12	94
	81	00	24	28
	83/1	00	08	66
	143	00	00	85
	142	00	00	35
	80	00	07	60
	79	00	28	64
	78	00	07	52
	76/2	00	02	22
	76/1	00	11	37
	75	00	04	33
	74	00	25	48
	70	00	84	65
	67	00	00	13
	66/3	00	12	78
	66/1	00	13	28
	65	00	49	32
	63	00	22	25
	62	00	00	25
	Total	05	78	53
जगदीशपुर	8	00	03	84
	9	00	29	74
	10	00	01	36
	13	00	75	49
	12	00	00	42
	14	00	01	57
	15/2	00	04	80
	15/1	00	13	34

(1)	(2)	(3)	(4)	(5)
	18	00	02	34
	19	00	37	74
	20	00	01	95
	21	00	25	48
	22/2	00	01	91
	23/2	00	11	43
	23/1	00	28	53
	67	00	04	87
	Total	02	44	81
बिहरना	354/1	00	01	67
	354/2	00	15	47
	352	00	16	58
	353	00	04	26
	351	00	02	85
	46	00	04	75
	350/2	00	09	30
	47	00	52	73
	45	00	35	05
	44	00	00	69
	43	00	21	31
	40	00	49	94
	42/2	00	05	39
	42/1	00	45	61
	41	00	03	25
	37	00	60	82
	35	00	31	91
	34/1	00	20	63
	34/2,3,4	00	06	77
	56	00	02	14
	54	00	62	17
	101	00	01	82
	138	00	15	73
	140	00	22	57
	139	00	07	46
	143	00	03	68

(1)	(2)	(3)	(4)	(5)
	136	00	35	91
	137	00	02	71
	135	00	33	79
	129	00	37	20
	131	00	00	03
	134	00	37	71
	150	00	00	56
	132	00	28	85
	151	00	84	64
	110	00	35	62
	109	00	18	06
	107	00	68	95
	517	00	04	24
	Total	08	92	82
बैथनी	1	00	03	16
	11	00	02	03
	13	00	09	44
	12	00	07	43
	10/3	00	21	43
	10/4	00	06	85
	9	00	47	60
	14	00	00	59
	16/1	00	04	32
	21/2	00	34	60
	20	00	07	93
	21/1	00	29	25
	24/1	00	32	24
	24/2	00	26	78
	26/1	00	43	01
	27	00	41	93
	30/1	00	51	84
	50/1	00	50	45
	56	00	35	93
	57	00	04	11
	61	00	35	00

(1)	(2)	(3)	(4)	(5)
	60	00	41	61
	59	00	02	93
	335	00	43	24
	338	00	24	64
	337	00	20	59
	340	00	04	56
	343	00	00	01
	347	00	23	73
	348/2	00	34	79
	348/1	00	00	10
	350/1	00	16	77
	350/2,3	00	24	14
	351/2	00	02	84
	351/1	00	34	90
	353	00	03	11
	352	00	14	77
	354/1	00	03	33
	354/4,5,6	00	37	41
	356/3	00	63	72
	356/2	00	46	37
	356/1	00	19	91
	Total	09	59	39
मिर्जापुर	357	00	01	22
	358	00	21	13
	360	00	18	72
	Total	00	41	07
ढाँड	43/2	00	01	31
	43/1	00	27	44
	42	00	16	64
	41	00	18	04
	40	00	10	22
	20	00	65	72
	17	00	46	00
	14	00	03	34
	12	00	21	63

(1)	(2)	(3)	(4)	(5)
	581	00	22	18
	584	00	23	11
	583/2	00	09	84
	583/1	00	26	08
	649	00	27	69
	628	00	56	16
	629/3	00	24	22
	629/2	00	21	57
	629/1	00	10	49
	630	00	19	33
	631	00	42	74
	622	00	01	39
	618	00	10	28
	766/1	00	30	12
	767	00	04	45
	766/3	00	01	73
	768	00	01	03
	769/1	00	39	13
	770	00	17	36
	774	00	17	74
	775	00	14	95
	773	00	05	43
	776/1	00	30	31
	783/2	00	01	25
	777	00	17	07
	778	00	36	52
	779	00	00	07
	783/1	00	02	20
	782/2,4	00	14	81
	782/3,5	00	00	04
	782/6,7	00	13	66
	781/1	00	00	74
	798	00	46	47
	797	00	02	97
	Total	08	03	47

(1)	(2)	(3)	(4)	(5)
लशगरपुर	30	00	13	05
	35	00	01	39
	102	00	54	20
	104/2	00	09	56
	100/2	00	00	47
	101	00	24	53
	100/1	00	20	56
	109/2	00	01	83
	109/1	00	00	62
	99	00	04	18
	98	00	00	97
	97	00	04	83
	90/1	00	21	35
	90/2	00	15	28
	114	00	09	97
	115	00	23	37
	116	00	42	33
	121/2	00	00	25
	117	00	03	76
	121/1	00	04	05
	118	00	01	46
	119	00	23	13
	79	00	02	72
	78	00	06	36
	Total	02	90	22
चमारी	180	00	00	86
	183	00	28	93
	181	00	22	36
	179	00	15	21
	197	00	11	43
	198	00	20	98
	199	00	11	04
	200	00	25	56
	201	00	72	08
	488	00	00	12

(1)	(2)	(3)	(4)	(5)
	484	00	08	99
	485	00	23	46
	483	00	00	01
	486	00	08	86
	487	00	00	42
	479	00	55	28
	473	00	02	70
	453	00	39	33
	452	00	48	34
	451	00	38	59
	447	00	00	37
	430	00	25	67
	431	00	14	63
	432	00	13	10
	433	00	28	12
	434	00	31	36
	435	00	38	36
	436	00	08	86
	437	00	09	10
	Total	06	04	12

[फा. सं. आर-11024(14)/1/2019-ओआर-I/ई-29468]

शान्तनु धर, अवर सचिव

New Delhi, the 17th June, 2019

S.O. 988.—Whereas, it appears to the Central Government, that it is necessary in the public Interest that for the transportation of the Petroleum Product in the state of Madhya Pradesh and Uttar Pradesh Pipeline Should be laid for implementing of Bina-Panki (Kanpur) Pipeline Project by the Bharat Petroleum Corporation Limited.

And Whereas, it appears to the Central Government that for the purpose of laying the said pipeline, It is necessary to acquire the right of user (ROU) in the land under which the said pipeline is proposed to be laid, and which is described in the Schedule annexed to this notification.

Now therefore, in exercise of the powers conferred by Sub section (1) of Section 3 of the petroleum and Minerals Pipeline (Acquisition of Right of user in Land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user there in.

Any person who is interested in the land described in the said schedule, may submit objection in writing to Shri Kirodi Lal Meena SDO (Revenue) Bina District Sagar Madhya Pradesh Competent Authority, Bharat Petroleum Corporation Limited, Bina Panki (Kanpur) Pipeline Project Office 1st Floor Tapti Complex , Near Agasod Police Station , BORL Residential Complex, Bina District Sagar, (M.P.) - 470124 within twenty one days from the date on which the copies of this notification Issued under Sub-section (1) of section 3 of the said Act, as published in the Gazette of India, are made available to the general public.

SCHEDULE**Tehsil : Bina****District : Sagar****State: Madhya Pradesh**

Name of Village	Survey No. / Gata No.	Area		
		Hectare	Are	Sqm.
(1)	(2)	(3)	(4)	(5)
Agasod	519/1	01	31	86
	509/2	00	18	90
	507/2	00	43	37
	507/1	00	48	75
	506/1	00	00	47
	500/1	00	00	36
	508/1	00	02	24
	Total	02	45	95
Dehri	19	00	03	93
	203	00	02	63
	18/1	00	52	13
	18/4	00	00	08
	17/3	00	13	79
	17/2	00	11	54
	17/1	00	06	27
	16/1	00	55	09
	12	00	13	60
	11	00	88	57
	8/3	00	21	12
	9	00	54	63
	23/1	00	03	47
	35/1	00	28	95
	35/2	00	56	57
	34	00	12	33
	33	00	04	69
	51	00	42	51
	49	00	25	84
	46/2	00	71	79
	46/1	00	26	85
	61	00	03	00
	45	00	00	78
	72/2	00	05	22
	73	00	18	61
	79	00	22	15
	76	00	13	90
	77	00	08	57
	170	00	01	84
	86	00	11	30
	87	00	14	69
	88	00	16	88
	89	00	22	27
	90	00	05	67
	85	00	76	77
	94	00	16	98
	95	00	11	18
	96	00	01	96
	Total	08	48	15
Semarkhedi	448/5	00	00	56
	455	00	00	40
	456	00	06	71
	443/2	00	03	39
	458	00	29	66

(1)	(2)	(3)	(4)	(5)
	457	00	01	76
	459	00	25	71
	463	00	29	11
	462	00	33	61
	464	00	02	05
	Total	01	32	96
Kachnoda	160	00	01	17
	159/2	00	48	02
	159/1	00	04	91
	162/1	00	00	91
	153	00	52	97
	152	00	24	48
	162/2	00	04	26
	151	00	38	80
	150	00	20	56
	147	00	08	42
	138/1	00	11	23
	139	00	21	60
	144	00	18	19
	141	00	06	11
	82	00	12	94
	81	00	24	28
	83/1	00	08	66
	143	00	00	85
	142	00	00	35
	80	00	07	60
	79	00	28	64
	78	00	07	52
	76/2	00	02	22
	76/1	00	11	37
	75	00	04	33
	74	00	25	48
	70	00	84	65
	67	00	00	13
	66/3	00	12	78
	66/1	00	13	28
	65	00	49	32
	63	00	22	25
	62	00	00	25
	Total	05	78	53
Jagdishpur	8	00	03	84
	9	00	29	74
	10	00	01	36
	13	00	75	49
	12	00	00	42
	14	00	01	57
	15/2	00	04	80
	15/1	00	13	34
	18	00	02	34
	19	00	37	74
	20	00	01	95
	21	00	25	48
	22/2	00	01	91
	23/2	00	11	43
	23/1	00	28	53
	67	00	04	87
	Total	02	44	81
Biharna	354/1	00	01	67

(1)	(2)	(3)	(4)	(5)
	354/2	00	15	47
	352	00	16	58
	353	00	04	26
	351	00	02	85
	46	00	04	75
	350/2	00	09	30
	47	00	52	73
	45	00	35	05
	44	00	00	69
	43	00	21	31
	40	00	49	94
	42/2	00	05	39
	42/1	00	45	61
	41	00	03	25
	37	00	60	82
	35	00	31	91
	34/1	00	20	63
	34/2,3,4	00	06	77
	56	00	02	14
	54	00	62	17
	101	00	01	82
	138	00	15	73
	140	00	22	57
	139	00	07	46
	143	00	03	68
	136	00	35	91
	137	00	02	71
	135	00	33	79
	129	00	37	20
	131	00	00	03
	134	00	37	71
	150	00	00	56
	132	00	28	85
	151	00	84	64
	110	00	35	62
	109	00	18	06
	107	00	68	95
	517	00	04	24
	Total	08	92	82
Bethni	1	00	03	16
	11	00	02	03
	13	00	09	44
	12	00	07	43
	10/3	00	21	43
	10/4	00	06	85
	9	00	47	60
	14	00	00	59
	16/1	00	04	32
	21/2	00	34	60
	20	00	07	93
	21/1	00	29	25
	24/1	00	32	24
	24/2	00	26	78
	26/1	00	43	01
	27	00	41	93
	30/1	00	51	84
	50/1	00	50	45
	56	00	35	93

(1)	(2)	(3)	(4)	(5)
	57	00	04	11
	61	00	35	00
	60	00	41	61
	59	00	02	93
	335	00	43	24
	338	00	24	64
	337	00	20	59
	340	00	04	56
	343	00	00	01
	347	00	23	73
	348/2	00	34	79
	348/1	00	00	10
	350/1	00	16	77
	350/2,3	00	24	14
	351/2	00	02	84
	351/1	00	34	90
	353	00	03	11
	352	00	14	77
	354/1	00	03	33
	354/4,5,6	00	37	41
	356/3	00	63	72
	356/2	00	46	37
	356/1	00	19	91
	Total	09	59	39
Mirjapur	357	00	01	22
	358	00	21	13
	360	00	18	72
	Total	00	41	07
Dhand	43/2	00	01	31
	43/1	00	27	44
	42	00	16	64
	41	00	18	04
	40	00	10	22
	20	00	65	72
	17	00	46	00
	14	00	03	34
	12	00	21	63
	581	00	22	18
	584	00	23	11
	583/2	00	09	84
	583/1	00	26	08
	649	00	27	69
	628	00	56	16
	629/3	00	24	22
	629/2	00	21	57
	629/1	00	10	49
	630	00	19	33
	631	00	42	74
	622	00	01	39
	618	00	10	28
	766/1	00	30	12
	767	00	04	45
	766/3	00	01	73
	768	00	01	03
	769/1	00	39	13
	770	00	17	36
	774	00	17	74
	775	00	14	95

(1)	(2)	(3)	(4)	(5)
	773	00	05	43
	776/1	00	30	31
	783/2	00	01	25
	777	00	17	07
	778	00	36	52
	779	00	00	07
	783/1	00	02	20
	782/2,4	00	14	81
	782/3,5	00	00	04
	782/6,7	00	13	66
	781/1	00	00	74
	798	00	46	47
	797	00	02	97
	Total	08	03	47
Lasgarpur	30	00	13	05
	35	00	01	39
	102	00	54	20
	104/2	00	09	56
	100/2	00	00	47
	101	00	24	53
	100/1	00	20	56
	109/2	00	01	83
	109/1	00	00	62
	99	00	04	18
	98	00	00	97
	97	00	04	83
	90/1	00	21	35
	90/2	00	15	28
	114	00	09	97
	115	00	23	37
	116	00	42	33
	121/2	00	00	25
	117	00	03	76
	121/1	00	04	05
	118	00	01	46
	119	00	23	13
	79	00	02	72
	78	00	06	36
	Total	02	90	22
Chamari	180	00	00	86
	183	00	28	93
	181	00	22	36
	179	00	15	21
	197	00	11	43
	198	00	20	98
	199	00	11	04
	200	00	25	56
	201	00	72	08
	488	00	00	12
	484	00	08	99
	485	00	23	46
	483	00	00	01
	486	00	08	86
	487	00	00	42
	479	00	55	28
	473	00	02	70
	453	00	39	33
	452	00	48	34

(1)	(2)	(3)	(4)	(5)
	451	00	38	59
	447	00	00	37
	430	00	25	67
	431	00	14	63
	432	00	13	10
	433	00	28	12
	434	00	31	36
	435	00	38	36
	436	00	08	86
	437	00	09	10
	Total	06	04	12

[F. No. R-11024(14)/1/2019-OR-I/E-29468]

SANTANU DHAR, Under Secy.

नई दिल्ली, 17 जून, 2019

का.आ. 989.—केन्द्रीय सरकार को, ऐसा प्रतीत होता है कि लोकहित में यह आवश्यक है कि मध्य प्रदेश एवं उत्तर प्रदेश राज्य में पेट्रोलियम पदार्थों के परिवहन के लिए बीना पंकी (कानपुर) पाइपलाइन परियोजना के क्रियान्वयन हेतु भारत पेट्रोलियम कॉर्पोरेशन लिमिटेड द्वारा पाइपलाइन बिछाई जाना आवश्यक है।

केन्द्रीय सरकार को ऐसी पाइपलाइन बिछाने के प्रयोजन के लिये यह आवश्यक प्रतीत होता है, कि ऐसी भूमि में जो इस से उपाबद्ध अनुसूची में वर्णित है, और जिसमें उक्त पाइपलाइन बिछाई जाने का प्रस्ताव है, उपयोग के अधिकार का अर्जन किया जाए।

अतः अब, केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम 1962 (1962 का 50) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उस भूमि में उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा करती है।

कोई व्यक्ति जो उक्त अनुसूची में वर्णित भूमि में हितबद्ध है, उस तारीख से, जिसको इस अधिसूचना में युक्त भारत के राजपत्र की प्रतिया साधारण जनता को उपलब्ध करा दी जाती है, इक्कीस दिन के भीतर, भूमि के नीचे पाइपलाइन बिछाए जाने के लिए उसमें उपयोग के अधिकार के संबन्ध में श्री किरोडीलाल मीणा अनुविभागीय अधिकारी (राजस्व) बीना जिला सागर मध्य प्रदेश सक्षम प्राधिकारी, भारत पेट्रोलियम कॉर्पोरेशन लिमिटेड बीना पंकी (कानपुर) पेट्रोलियम पाइपलाइन परियोजना कार्यालय, प्रथम तल, ताप्ति कॉम्प्लेक्स, अगासोद पुलिस स्टेशन के पास, बी.ओ.आर.एल. आवासीय परिसर, बीना, जिला-सागर (म.प्र.) - 470124 को लिखित रूप से आक्षेप भेज सकेगा।

अनुसूची**तहसील- मोहनगढ****जिला-टीकमगढ****राज्य-मध्य प्रदेश**

गाँव का नाम	सर्वे नं./गाटा नं.	क्षेत्रफल		
		हैक्टेयर	एयर	वर्गमीटर

(1)	(2)	(3)	(4)	(5)
हतगोरा	145	00	08	16
	144	00	01	03
	146	00	15	02
	150	00	09	58

(1)	(2)	(3)	(4)	(5)
	149	00	12	69
	149/330	00	07	70
	148	00	05	45
	160	00	11	07
	161	00	09	25
	162	00	18	06
	119	00	01	36
	Total	00	99	37
बाबा खेडा	158	00	01	33
	134	00	11	07
	131	00	06	16
	139	00	20	36
	135	00	02	29
	137	00	02	73
	136	00	12	64
	130	00	06	82
	126	00	30	37
	127	00	40	36
	121	00	38	20
	123	00	02	91
	2	00	02	44
	24/2/3	00	00	91
	24/2/4	00	22	98
	24/2/2	00	05	20
	24/2/1	00	19	56
	24/1	00	28	46
	22/2	00	14	17
	22/1	00	09	92
	4	00	32	97
	20	00	00	60
	21	00	00	77
	7	00	03	86
	6	00	00	59
	1/2	00	58	81
	8	00	01	83

(1)	(2)	(3)	(4)	(5)
	Total	03	78	31
बटवाहा	188	00	02	25
	165/2/4	00	17	01
	165/2/3	00	13	56
	165/2/2	00	23	41
	165/2/1	00	07	08
	165/2	00	23	49
	164/1/6	00	09	11
	164/1/5	00	27	33
	164/1/2	00	10	03
	164/1/1	00	18	45
	164/2/4	00	14	75
	163	00	13	89
	160	00	03	32
	159	00	01	05
	158	00	12	73
	157	00	26	98
	156	00	01	65
	155	00	03	31
	150	00	02	68
	Total	02	32	08
भगवंतपुरा भाटा	40	00	97	12
	35	00	11	17
	38	00	14	16
	37	00	05	39
	36	00	00	62
	30	00	16	06
	31	00	00	02
	32	00	01	69
	33	00	01	68
	27	00	25	45
	24	00	10	08
	26	00	06	43
	25	00	20	08
	10	00	03	63

(1)	(2)	(3)	(4)	(5)
	45	00	01	82
	5	01	03	56
	6/1/1	00	05	09
	6/1/2	00	26	49
	6/3/9	00	66	36
	Total	04	16	90
भगवंतपुरा खास	284/3	00	00	01
	284/4	00	27	21
	284/5	00	23	85
	284	00	45	23
	284/1	00	01	99
	289/5/1	00	11	47
	289/2ख/4	00	21	52
	292	00	01	94
	293	00	08	41
	289/4च/3/1	00	00	15
	293/3/1	00	03	30
	293/1/ख	00	18	00
	293/1/क	00	26	92
	294	00	01	19
	295/3	00	11	65
	295/2/4	00	10	60
	295/2/5	00	14	15
	295/2/9/1	00	04	06
	295/2	00	55	90
	325	00	02	36
	349	00	04	59
	350	00	00	10
	348	00	03	94
	346	00	08	51
	345	00	01	88
	336	00	01	84
	337	00	00	88
	335	00	03	78
	338	00	11	15

(1)	(2)	(3)	(4)	(5)
	334	00	01	84
	341	00	00	40
	340	00	00	56
	339	00	07	67
	333	00	00	40
	Total	03	37	45

[फा. सं. आर-11024(14)/1/2019-ओआर-I/ई-29468]

शान्तनु धर, अवर सचिव

New Delhi, the 17th June, 2019

S.O. 989.—Whereas, it appears to the Central Government, that it is necessary in the public Interest that for the transportation of the Petroleum Product in the state of Madhya Pradesh and Uttar Pradesh Pipeline Should be laid for implementing of Bina-Panki (Kanpur) Pipeline Project by the Bharat Petroleum Corporation Limited.

And Whereas, it appears to the Central Government that for the purpose of laying the said pipeline, It is necessary to acquire the right of user (ROU) in the land under which the said pipeline is proposed to be laid, and which is described in the Schedule annexed to this notification.

Now therefore, in exercise of the powers conferred by Sub section (1) of Section 3 of the petroleum and Minerals Pipeline (Acquisition of Right of user in Land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user there in.

Any person who is interested in the land described in the said schedule, may submit objection in writing to Shri Kirodi Lal Meena SDO (Revenue) Bina District Sagar Madhya Pradesh Competent Authority, Bharat Petroleum Corporation Limited, Bina Panki (Kanpur) Pipeline Project Office 1st Floor Tapti Complex , Near Agasod Police Station , BORL Residential Complex, Bina District Sagar, (M.P.) - 470124 within twenty one days from the date on which the copies of this notification Issued under Sub-section (1) of section 3 of the said Act, as published in the Gazette of India, are made available to the general public.

SCHEDULE**Tehsil: Mohangarh****District : Tikamgarh****State: Madhya Pradesh**

Name of Village	Survey No. / Gata No.	Area		
		Hectare	Are	Sqm.
(1)	(2)	(3)	(4)	(5)
Hatgora	145	00	08	16
	144	00	01	03
	146	00	15	02
	150	00	09	58
	149	00	12	69
	149/330	00	07	70
	148	00	05	45
	160	00	11	07
	161	00	09	25
	162	00	18	06
	119	00	01	36
	Total	00	99	37
Baba Khera	158	00	01	33
	134	00	11	07
	131	00	06	16
	139	00	20	36
	135	00	02	29
	137	00	02	73
	136	00	12	64

(1)	(2)	(3)	(4)	(5)
	130	00	06	82
	126	00	30	37
	127	00	40	36
	121	00	38	20
	123	00	02	91
	2	00	02	44
	24/2/3	00	00	91
	24/2/4	00	22	98
	24/2/2	00	05	20
	24/2/1	00	19	56
	24/1	00	28	46
	22/2	00	14	17
	22/1	00	09	92
	4	00	32	97
	20	00	00	60
	21	00	00	77
	7	00	03	86
	6	00	00	59
	1/2	00	58	81
	8	00	01	83
	Total	03	78	31
Batwaha	188	00	02	25
	165/2/4	00	17	01
	165/2/3	00	13	56
	165/2/2	00	23	41
	165/2/1	00	07	08
	165/2	00	23	49
	164/1/6	00	09	11
	164/1/5	00	27	33
	164/1/2	00	10	03
	164/1/1	00	18	45
	164/2/4	00	14	75
	163	00	13	89
	160	00	03	32
	159	00	01	05
	158	00	12	73
	157	00	26	98
	156	00	01	65
	155	00	03	31
	150	00	02	68
	Total	02	32	08
Bhagwantpura Bhata	40	00	97	12
	35	00	11	17
	38	00	14	16
	37	00	05	39
	36	00	00	62
	30	00	16	06
	31	00	00	02
	32	00	01	69
	33	00	01	68
	27	00	25	45
	24	00	10	08
	26	00	06	43
	25	00	20	08
	10	00	03	63
	45	00	01	82
	5	01	03	56
	6/1/1	00	05	09

(1)	(2)	(3)	(4)	(5)
	6/1/2	00	26	49
	6/3/9	00	66	36
	Total	04	16	90
Bhagwantpura Khas	284/3	00	00	01
	284/4	00	27	21
	284/5	00	23	85
	284	00	45	23
	284/1	00	01	99
	289/5/1	00	11	47
	289/2ख/4	00	21	52
	292	00	01	94
	293	00	08	41
	289/4च/3/1	00	00	15
	293/3/1	00	03	30
	293/1/ख	00	18	00
	293/1/क	00	26	92
	294	00	01	19
	295/3	00	11	65
	295/2/4	00	10	60
	295/2/5	00	14	15
	295/2/9/1	00	04	06
	295/2	00	55	90
	325	00	02	36
	349	00	04	59
	350	00	00	10
	348	00	03	94
	346	00	08	51
	345	00	01	88
	336	00	01	84
	337	00	00	88
	335	00	03	78
	338	00	11	15
	334	00	01	84
	341	00	00	40
	340	00	00	56
	339	00	07	67
	333	00	00	40
	Total	03	37	45

[F. No. R-11024(14)/1/2019-OR-I/E-29468]

SANTANU DHAR, Under Secy.

नई दिल्ली, 17 जून, 2019

का.आ. 990.—केन्द्रीय सरकार को, ऐसा प्रतीत होता है कि लोकहित में यह आवश्यक है कि मध्य प्रदेश एवं उत्तर प्रदेश राज्य में पेट्रोलियम पदार्थों के परिवहन के लिए बीना पंकी (कानपुर) पाइपलाइन परियोजना के क्रियान्वयन हेतु भारत पेट्रोलियम कॉर्पोरेशन लिमिटेड द्वारा पाइपलाइन बिछाई जाना आवश्यक है।

केन्द्रीय सरकार को ऐसी पाइपलाइन बिछाने के प्रयोजन के लिये यह आवश्यक प्रतीत होता है, कि ऐसी भूमि में जो इस से उपावद्ध अनुसूची में वर्णित है, और जिसमें उक्त पाइपलाइन बिछाई जाने का प्रस्ताव है, उपयोग के अधिकार का अर्जन किया जाए।

अतः अब, केन्द्रीय सरकार, पेट्रोलियम और खजिन पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम 1962 (1962 का 50) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उस भूमि में उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा करती है।

कोई व्यक्ति जो उक्त अनुसूची में वर्णित भूमि में हितबद्ध है, उस तारीख से, जिसको इस अधिसूचना में युक्त भारत के राजपत्र की प्रतिया साधारण जनता को उपलब्ध करा दी जाती है, इक्कीस दिन के भीतर, भूमि के नीचे पाइपलाइन बिछाए जाने के लिए उसमें उपयोग के अधिकार के संबंध में श्री किरोडीलाल मीणा अनुविभागीय अधिकारी (राजस्व) बीना जिला सागर मध्य प्रदेश सक्षम प्राधिकारी, भारत पेट्रोलियम कॉर्पोरेशन लिमिटेड बीना पंकी (कानपुर) पेट्रोलियम पाइपलाइन परियोजना कार्यालय, प्रथम तल, तासि कॉम्प्लेक्स, अगासोद पुलिस स्टेशन के पास, बी.ओ.आर.एल. आवासीय परिसर, बीना, जिला-सागर (म.प्र.) - 470124 को लिखित रूप से आक्षेप भेज सकेगा।

अनुसूची

तहसील- जतारा

जिला-टीकमगढ़

राज्य-मध्य प्रदेश

गांव का नाम	सर्वे नं./गाटा नं.	क्षेत्रफल		
		हेक्टेयर	एयर	वर्गमीटर
(1)	(2)	(3)	(4)	(5)
वर्माताल	760	00	26	88
	766	00	39	66
	767	00	19	57
	758	00	03	78
	757	00	58	73
	768	00	01	55
	560अ	00	10	86
	560/3	00	32	82
	560/2	00	00	38
	560/1	00	25	48
	571	00	51	85
	573	00	00	78
	572	00	15	96
	577	00	04	31
	606	00	12	87
	605	00	09	32
	602	00	03	73
	601	00	11	69
	607	01	06	46
	192	00	34	74
	191	00	26	22
	195	00	01	12

(1)	(2)	(3)	(4)	(5)
	196	00	21	15
	197	00	01	75
	200/3/2	00	10	27
	201/1	00	36	72
	201/3	00	01	67
	201/2	00	31	64
	201/5	00	06	71
	201/9/1	00	00	33
	201/9/2	00	10	97
	201/9/6	00	00	12
	201/9/5	00	26	36
	201/9/4	00	05	64
	104/1/5	00	13	95
	104/1/4	00	25	96
	104/1/3	00	24	83
	104	00	34	59
	103	00	23	35
	102	00	00	61
	100	00	10	58
	99	00	02	14
	101	00	03	11
	98	00	24	51
	97	00	09	86
	Total	08	25	58
कुरई	203	00	28	55
	202	00	19	30
	234	00	04	02
	1070	00	14	68
	235	00	00	22
	200	00	02	36
	236	00	02	57
	237	00	01	13
	238	00	19	16
	239	00	06	09
	240	00	06	06

(1)	(2)	(3)	(4)	(5)
	258	00	00	66
	241	00	00	11
	257	00	29	41
	254	00	03	27
	262	00	00	69
	251	00	08	36
	252	00	11	18
	250	00	21	81
	717	00	01	79
	337	00	05	41
	338	00	06	62
	336	00	09	79
	340	00	02	31
	335	00	04	68
	334	00	01	09
	333	00	05	43
	332	00	13	00
	330	00	03	79
	331	00	01	64
	341	00	02	66
	349	00	05	97
	388	00	18	56
	386	00	18	33
	351	00	00	06
	384	00	04	40
	385	00	01	45
	382	00	01	99
	406	00	29	81
	644	00	01	26
	643	00	14	11
	638	00	02	75
	642	00	27	76
	639	00	16	43
	631	00	08	99
	640	00	00	19

(1)	(2)	(3)	(4)	(5)
	630	00	03	22
	612	00	02	65
	609	00	01	39
	599	00	00	51
	572	00	00	65
	573	00	15	74
	577	00	01	19
	583	00	00	04
	578	00	02	27
	576	00	02	41
	579	00	08	38
	586	00	04	96
	597	00	15	74
	596	00	01	53
	595	00	01	73
	594	00	21	79
	749	00	01	77
	750	00	01	15
	751	00	02	50
	837	00	03	27
	836	00	21	77
	833	00	07	16
	838	00	00	04
	870	00	02	33
	869	00	01	29
	868	00	26	13
	866	00	11	05
	867	00	01	72
	865	00	12	05
	864	00	03	79
	861/6	00	29	97
	861	00	00	06
	858	00	04	23
	1095	00	21	24
	1094	00	00	73

(1)	(2)	(3)	(4)	(5)
	883	00	00	01
	Total	06	26	36
देवखा	629	00	36	79
	630	00	00	73
	631	00	27	70
	632	00	26	70
	637/1	00	00	43
	640/1/6	00	61	97
	640/3	00	20	47
	572/2	00	44	51
	573	00	00	51
	574	00	26	98
	575	00	08	82
	576	00	12	64
	577	00	16	18
	584	00	14	94
	583	00	11	71
	582	00	06	12
	581	00	01	54
	580	00	07	05
	579	00	07	64
	588/19	00	03	59
	546	00	00	01
	545	00	17	96
	541	00	01	69
	540	00	12	25
	537	00	01	39
	539	00	03	78
	538	00	14	44
	528	00	08	39
	529	00	21	96
	121	00	21	14
	112	00	00	86
	113	00	04	36
	120	00	12	44

(1)	(2)	(3)	(4)	(5)
	119	00	26	62
	118	00	19	65
	94	00	21	87
	95	00	03	57
	96	00	19	46
	97	00	12	32
	71	00	08	24
	70	00	03	61
	69	00	11	50
	21	00	20	50
	22	00	16	84
	24	00	01	28
	23	00	13	35
	9	00	00	01
	25	00	19	90
	8	00	01	75
	Total	06	58	16
धामना खास	587	00	12	75
	586	00	11	21
	588	00	11	31
	589	00	08	35
	590	00	07	00
	591	00	24	00
	579	00	01	03
	580	00	18	13
	577	00	19	88
	576	00	00	56
	573	00	11	95
	572	00	02	82
	571	00	10	43
	570	00	28	35
	568	00	19	25
	565	00	02	77
	566	00	26	19
	562	00	02	21

(1)	(2)	(3)	(4)	(5)
	561	00	20	41
	560	00	01	92
	1	00	04	51
	414	00	58	47
	408	00	20	43
	407	00	18	17
	380	00	01	34
	406	00	00	01
	2	00	15	76
	3	00	01	54
	4	00	01	76
	4/2940	00	11	15
	5	00	14	31
	Total	03	87	97
दिगौडा	2822	00	00	80
	2823	00	15	05
	2824	00	21	77
	2828	00	04	72
	2827	00	03	51
	2856	00	01	23
	3328	00	01	81
	3313	00	09	62
	3310	00	07	60
	3311	00	07	99
	3309	00	00	27
	3306	00	00	02
	3404	00	04	29
	2933	00	03	23
	2934	00	17	43
	2932	00	02	24
	2928	00	00	67
	2929	00	12	91
	2931	00	07	51
	2930	00	01	20
	2927	00	12	08

(1)	(2)	(3)	(4)	(5)
	2926	00	24	61
	2943	00	12	10
	2942	00	08	48
	2944	00	15	76
	2946	00	00	03
	2945	00	25	84
	2963	00	11	56
	2959	00	04	15
	2960	00	02	04
	2962	00	09	59
	2961	00	26	46
	2973	00	20	14
	2974	00	34	25
	3222	00	00	42
	3220	00	00	63
	3217	00	11	63
	3216	00	00	50
	3215	00	03	07
	3218	00	03	19
	3214/2	00	14	39
	3213/2	00	07	43
	2983	00	01	49
	3161	00	14	91
	2988	00	10	10
	3160	00	04	86
	3000	00	36	41
	3002	00	50	49
	3120	00	33	94
	3005	00	00	79
	3118	00	19	45
	3116	00	15	84
	3115	00	17	39
	3107	00	13	54
	3109	00	01	56
	3108	00	17	54

(1)	(2)	(3)	(4)	(5)
	3103	00	15	46
	3104	00	03	10
	3101	00	14	95
	3094	00	03	09
	3095	00	15	50
	3092	00	00	02
	3096	00	13	47
	3091	00	03	29
	3084	00	16	11
	3085	00	01	69
	3083	00	24	94
	3069	00	19	93
	3066	00	52	68
	Total	07	94	76
वेदरू	640	00	20	92
	639	00	02	67
	1021	00	01	54
	497	00	15	07
	507	00	06	69
	521	00	01	49
	506	00	12	13
	522	00	00	03
	505/1	00	00	06
	504	00	05	09
	503	00	04	68
	502	00	05	70
	501	00	00	09
	537/2	00	03	71
	484	00	04	23
	485	00	06	05
	483	00	03	93
	482/2	00	03	99
	482/1	00	05	57
	479	00	00	60
	481	00	10	47

(1)	(2)	(3)	(4)	(5)
	466	00	02	04
	465	00	02	62
	461	00	12	41
	460	00	03	74
	462	00	05	88
	450	00	04	50
	463	00	08	71
	132	00	06	47
	133	00	06	51
	134	00	10	57
	135	00	04	24
	137	00	02	52
	53	00	17	75
	56	00	02	42
	57	00	09	05
	52	00	28	68
	60	00	00	52
	51	00	01	56
	61	00	12	06
	62	00	11	81
	40	00	15	01
	1084	00	15	08
	38	00	09	93
	1083	00	09	35
	33	00	28	16
	32	00	21	29
	31	00	28	59
	23	00	05	04
	22	00	07	00
	25	00	09	24
	26	00	03	26
	16	00	02	86
	19	00	12	81
	18	00	00	64
	17	00	17	74

(1)	(2)	(3)	(4)	(5)
	Total	04	54	77
बैदीरा खास	166	00	04	97
	165/459	00	19	59
	165	00	16	38
	156	00	18	29
	155	00	12	52
	141	00	08	12
	142	00	09	30
	143	00	11	27
	145	00	00	01
	144	00	17	10
	147	00	16	41
	137/1	00	15	76
	232	00	01	66
	135/3	00	10	91
	135/2	00	88	23
	4	00	71	19
	11/1/14	00	07	88
	11/1/2	00	13	53
	11/1/1	00	10	75
	11/4	00	06	58
	11/1/13/2	00	74	50
	11/1/11	00	00	20
	11/1/10	00	35	66
	11/1/12	00	00	63
	11/1/7	00	13	37
	13	00	22	95
	12/2	00	02	48
	Total	05	10	24

[फा. सं. आर-11024(14)/1/2019-ओआर-I/ई-29468]

शान्तनु धर, अवर सचिव

New Delhi, the 17th June, 2019

S.O. 990.—Whereas, it appears to the Central Government, that it is necessary in the public Interest that for the transportation of the Petroleum Product in the state of Madhya Pradesh and Uttar Pradesh Pipeline Should be laid for implementing of Bina-Panki (Kanpur) Pipeline Project by the Bharat Petroleum Corporation Limited.

And Whereas, it appears to the Central Government that for the purpose of laying the said pipeline, It is necessary to acquire the right of user (ROU) in the land under which the said pipeline is proposed to be laid, and which is described in the Schedule annexed to this notification.

Now therefore, in exercise of the powers conferred by Sub-section (1) of Section 3 of the Petroleum and Minerals Pipeline (Acquisition of Right of user in Land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user there in.

Any person who is interested in the land described in the said Schedule, may submit objection in writing to Shri Kirodi Lal Meena SDO (Revenue) Bina District Sagar Madhya Pradesh Competent Authority, Bharat Petroleum Corporation Limited, Bina Panki (Kanpur) Pipeline Project Office 1st Floor Tapti Complex, Near Agasod Police Station, BORL Residential Complex, Bina District Sagar, (M.P.) - 470124 within twenty one days from the date on which the copies of this notification Issued under Sub-section (1) of section 3 of the said Act, as published in the Gazette of India, are made available to the general public.

SCHEDULE**Tehsil : Jatara****District : Tikamgarh****State: Madhya Pradesh**

Name of Village	Survey No. / Gata No.	Area		
		Hectare	Are	Sqm.
(1)	(2)	(3)	(4)	(5)
Varmatal	760	00	26	88
	766	00	39	66
	767	00	19	57
	758	00	03	78
	757	00	58	73
	768	00	01	55
	5603	00	10	86
	560/3	00	32	82
	560/2	00	00	38
	560/1	00	25	48
	571	00	51	85
	573	00	00	78
	572	00	15	96
	577	00	04	31
	606	00	12	87
	605	00	09	32
	602	00	03	73
	601	00	11	69
	607	01	06	46
	192	00	34	74
	191	00	26	22
	195	00	01	12
	196	00	21	15
	197	00	01	75
	200/3/2	00	10	27
	201/1	00	36	72
	201/3	00	01	67
	201/2	00	31	64
	201/5	00	06	71
	201/9/1	00	00	33
	201/9/2	00	10	97
	201/9/6	00	00	12
	201/9/5	00	26	36
	201/9/4	00	05	64

(1)	(2)	(3)	(4)	(5)
	104/1/5	00	13	95
	104/1/4	00	25	96
	104/1/3	00	24	83
	104	00	34	59
	103	00	23	35
	102	00	00	61
	100	00	10	58
	99	00	02	14
	101	00	03	11
	98	00	24	51
	97	00	09	86
	Total	08	25	58
Kurai	203	00	28	55
	202	00	19	30
	234	00	04	02
	1070	00	14	68
	235	00	00	22
	200	00	02	36
	236	00	02	57
	237	00	01	13
	238	00	19	16
	239	00	06	09
	240	00	06	06
	258	00	00	66
	241	00	00	11
	257	00	29	41
	254	00	03	27
	262	00	00	69
	251	00	08	36
	252	00	11	18
	250	00	21	81
	717	00	01	79
	337	00	05	41
	338	00	06	62
	336	00	09	79
	340	00	02	31
	335	00	04	68
	334	00	01	09
	333	00	05	43
	332	00	13	00
	330	00	03	79
	331	00	01	64
	341	00	02	66
	349	00	05	97
	388	00	18	56
	386	00	18	33
	351	00	00	06
	384	00	04	40
	385	00	01	45
	382	00	01	99
	406	00	29	81
	644	00	01	26
	643	00	14	11
	638	00	02	75
	642	00	27	76
	639	00	16	43
	631	00	08	99
	640	00	00	19

(1)	(2)	(3)	(4)	(5)
	630	00	03	22
	612	00	02	65
	609	00	01	39
	599	00	00	51
	572	00	00	65
	573	00	15	74
	577	00	01	19
	583	00	00	04
	578	00	02	27
	576	00	02	41
	579	00	08	38
	586	00	04	96
	597	00	15	74
	596	00	01	53
	595	00	01	73
	594	00	21	79
	749	00	01	77
	750	00	01	15
	751	00	02	50
	837	00	03	27
	836	00	21	77
	833	00	07	16
	838	00	00	04
	870	00	02	33
	869	00	01	29
	868	00	26	13
	866	00	11	05
	867	00	01	72
	865	00	12	05
	864	00	03	79
	861/6	00	29	97
	861	00	00	06
	858	00	04	23
	1095	00	21	24
	1094	00	00	73
	883	00	00	01
	Total	06	26	36
Deokha	629	00	36	79
	630	00	00	73
	631	00	27	70
	632	00	26	70
	637/1	00	00	43
	640/1/6	00	61	97
	640/3	00	20	47
	572/2	00	44	51
	573	00	00	51
	574	00	26	98
	575	00	08	82
	576	00	12	64
	577	00	16	18
	584	00	14	94
	583	00	11	71
	582	00	06	12
	581	00	01	54
	580	00	07	05
	579	00	07	64
	588/19	00	03	59
	546	00	00	01

(1)	(2)	(3)	(4)	(5)
	545	00	17	96
	541	00	01	69
	540	00	12	25
	537	00	01	39
	539	00	03	78
	538	00	14	44
	528	00	08	39
	529	00	21	96
	121	00	21	14
	112	00	00	86
	113	00	04	36
	120	00	12	44
	119	00	26	62
	118	00	19	65
	94	00	21	87
	95	00	03	57
	96	00	19	46
	97	00	12	32
	71	00	08	24
	70	00	03	61
	69	00	11	50
	21	00	20	50
	22	00	16	84
	24	00	01	28
	23	00	13	35
	9	00	00	01
	25	00	19	90
	8	00	01	75
	Total	06	58	16
Dhamna Khas	587	00	12	75
	586	00	11	21
	588	00	11	31
	589	00	08	35
	590	00	07	00
	591	00	24	00
	579	00	01	03
	580	00	18	13
	577	00	19	88
	576	00	00	56
	573	00	11	95
	572	00	02	82
	571	00	10	43
	570	00	28	35
	568	00	19	25
	565	00	02	77
	566	00	26	19
	562	00	02	21
	561	00	20	41
	560	00	01	92
	1	00	04	51
	414	00	58	47
	408	00	20	43
	407	00	18	17
	380	00	01	34
	406	00	00	01
	2	00	15	76
	3	00	01	54
	4	00	01	76

(1)	(2)	(3)	(4)	(5)
	4/2940	00	11	15
	5	00	14	31
	Total	03	87	97
Digauna	2822	00	00	80
	2823	00	15	05
	2824	00	21	77
	2828	00	04	72
	2827	00	03	51
	2856	00	01	23
	3328	00	01	81
	3313	00	09	62
	3310	00	07	60
	3311	00	07	99
	3309	00	00	27
	3306	00	00	02
	3404	00	04	29
	2933	00	03	23
	2934	00	17	43
	2932	00	02	24
	2928	00	00	67
	2929	00	12	91
	2931	00	07	51
	2930	00	01	20
	2927	00	12	08
	2926	00	24	61
	2943	00	12	10
	2942	00	08	48
	2944	00	15	76
	2946	00	00	03
	2945	00	25	84
	2963	00	11	56
	2959	00	04	15
	2960	00	02	04
	2962	00	09	59
	2961	00	26	46
	2973	00	20	14
	2974	00	34	25
	3222	00	00	42
	3220	00	00	63
	3217	00	11	63
	3216	00	00	50
	3215	00	03	07
	3218	00	03	19
	3214/2	00	14	39
	3213/2	00	07	43
	2983	00	01	49
	3161	00	14	91
	2988	00	10	10
	3160	00	04	86
	3000	00	36	41
	3002	00	50	49
	3120	00	33	94
	3005	00	00	79
	3118	00	19	45
	3116	00	15	84
	3115	00	17	39
	3107	00	13	54
	3109	00	01	56

(1)	(2)	(3)	(4)	(5)
	3108	00	17	54
	3103	00	15	46
	3104	00	03	10
	3101	00	14	95
	3094	00	03	09
	3095	00	15	50
	3092	00	00	02
	3096	00	13	47
	3091	00	03	29
	3084	00	16	11
	3085	00	01	69
	3083	00	24	94
	3069	00	19	93
	3066	00	52	68
	Total	07	94	76
Vedau	640	00	20	92
	639	00	02	67
	1021	00	01	54
	497	00	15	07
	507	00	06	69
	521	00	01	49
	506	00	12	13
	522	00	00	03
	505/1	00	00	06
	504	00	05	09
	503	00	04	68
	502	00	05	70
	501	00	00	09
	537/2	00	03	71
	484	00	04	23
	485	00	06	05
	483	00	03	93
	482/2	00	03	99
	482/1	00	05	57
	479	00	00	60
	481	00	10	47
	466	00	02	04
	465	00	02	62
	461	00	12	41
	460	00	03	74
	462	00	05	88
	450	00	04	50
	463	00	08	71
	132	00	06	47
	133	00	06	51
	134	00	10	57
	135	00	04	24
	137	00	02	52
	53	00	17	75
	56	00	02	42
	57	00	09	05
	52	00	28	68
	60	00	00	52
	51	00	01	56
	61	00	12	06
	62	00	11	81
	40	00	15	01
	1084	00	15	08

(1)	(2)	(3)	(4)	(5)
	38	00	09	93
	1083	00	09	35
	33	00	28	16
	32	00	21	29
	31	00	28	59
	23	00	05	04
	22	00	07	00
	25	00	09	24
	26	00	03	26
	16	00	02	86
	19	00	12	81
	18	00	00	64
	17	00	17	74
	Total	04	54	77
Baidaura Khas	166	00	04	97
	165/459	00	19	59
	165	00	16	38
	156	00	18	29
	155	00	12	52
	141	00	08	12
	142	00	09	30
	143	00	11	27
	145	00	00	01
	144	00	17	10
	147	00	16	41
	137/1	00	15	76
	232	00	01	66
	135/3	00	10	91
	135/2	00	88	23
	4	00	71	19
	11/1/14	00	07	88
	11/1/2	00	13	53
	11/1/1	00	10	75
	11/4	00	06	58
	11/1/13/2	00	74	50
	11/1/11	00	00	20
	11/1/10	00	35	66
	11/1/12	00	00	63
	11/1/7	00	13	37
	13	00	22	95
	12/2	00	02	48
	Total	05	10	24

[F. No. R-11024(14)/1/2019-OR-I/E-29468]

SANTANU DHAR, Under Secy.

नई दिल्ली, 17 जून, 2019

का. आ. 991.—केन्द्रीय सरकार ने पेट्रोलियम और खनिज पाइपलाइंस (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) (जिसे इसमें इसके पश्चात उक्त अधिनियम कहा गया है) की धारा 3 की उपधारा (1) के अधीन जारी की गई भारत सरकार के पेट्रोलियम और प्रकृतिक गैस मंत्रालय की अधिसूचना संख्या का. आ. 102, तारीख 10 जनवरी, 2019, भारत के राजपत्र संख्या 3 तारीख 13 जनवरी से 19 जनवरी, 2019 में प्रकाशित की गई थी। इस अधिसूचना से संलग्न अनुसूची में विनीर्दिष्ट भूमि में पश्चिम बंगाल राज्य में “हल्दीया- बरौनी पाइपलाइन सिस्टम्स पारियोजना”

हेतु जिला पूर्व मेदिनीपुर में कच्चे तेल के परिवहन हेतु इंडियन ऑयल कॉर्पोरेशन लिमिटेड द्वारा पाइपलाइन बिछाने के प्रयोजन के लिए उपयोग के अधिकार के अर्जन के अपने आशय की घोषणा की थी।

और उक्त राजपत्र अधिसूचना की सूचना संबन्धित भू-स्वामियों को तारीख 19 मार्च, 2019 तक उपलब्ध करा दी गई थी,

और सक्षम प्राधिकारी ने उक्त अधिनियम की धारा 6 की उपधारा (1) के अधीन केन्द्रीय सरकार को रिपोर्ट दे दी है,

और केन्द्रीय सरकार ने, उक्त रिपोर्ट पर विचार करने के पश्चात और यह समाधान हो जाने पर कि उक्त भूमि पाइपलाइन बिछाने के लिए अपेक्षित है, उसमें उपयोग के अधिकार के अर्जन करने का विनिश्चय किया है;

अतः अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह घोषणा करती है की इस अधिसूचना से संलग्न अनुसूची में विनीर्दिष्ट भूमि में पाइपलाइन बिछाने के लिए उपयोग के अधिकार का अर्जन किया जाए,

और केन्द्रीय सरकार उक्त अधिनियम की धारा 6 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निर्देश देती है कि उक्त भूमि में उपयोग के अधिकार इस घोषणा के प्रकाशन की तारीख से केन्द्रीय सरकार में निहित होने के बजाए, सभी विल्लंगमो से मुक्त होकर इंडियन ऑयल कॉर्पोरेशन लिमिटेड में निहित होगी,

पेट्रोलियम और खनिज पाइपलाइन अधिनियम, 1962 की धारा 10 के अधीन किसी भी क्षतिपूर्ति के लिए इंडियन ऑयल कॉर्पोरेशन लिमिटेड पूर्णतया उत्तरदाई होगा और पाइपलाइन से संबन्धित किसी भी मामले पर केन्द्रीय सरकार के विरुद्ध कोई दावा या कानूनी कार्यवाही नहीं हो सकेगी।

अनुसूची

जिला : पूर्व मेदिनीपुर			राज्य : पश्चिम बंगाल		
थाना	मौज़ा का नाम	सर्वेनम्बर	क्षेत्रफल		
			हेक्टेयर	एयर	वर्ग मीटर
(1)	(2)	(3)	(4)	(5)	(6)
सुताहटा - II	किसमत शिवरामनगर - 94	1681	00	00	86
		1682	00	02	25
		1675	00	00	54
		1674	00	00	79
		1673	00	01	99
		1672	00	01	1672
		1671	00	01	38
		1664	00	01	43
		1648	00	00	25
		1652	00	02	12
		1649	00	03	25
		1650	00	00	41
		1631	00	00	84
		1630	00	01	20
		1130	00	01	94
		1131	00	04	86

(1)	(2)	(3)	(4)	(5)	(6)
सुताहटा - II	किसमत शिवरामनगर - 94	1134	00	00	89
		1137	00	00	20
		1135	00	01	23
		1136	00	01	90
		1140	00	00	49
		1309	00	10	01
		1308	00	00	71
		1318	00	11	33
		1326	00	03	29
		1330	00	00	20
		1328	00	03	66
		1329	00	06	46
		1348	00	00	20
		1331	00	10	42
		1295	00	09	18
		1297	00	09	93
		1282	00	11	78
		1283	00	00	73
		1220	00	00	89
		977	00	01	17
		976	00	10	93
		966	00	05	10
		983	00	05	29
		965	00	05	80
		962	00	05	56
		956	00	02	87
		955	00	05	77
		954	00	10	34
		939	00	01	97
		917	00	11	49
		916	00	03	37
		905	00	09	55
		903	00	01	93
		814	00	00	62
		902	00	02	40
		815	00	00	33

(1)	(2)	(3)	(4)	(5)	(6)
सुताहटा - II	किसमत शिवरामनगर - 94	816	00	01	40
		817	00	02	91
		818	00	06	24
		2800	00	01	00
		821	00	00	20
		2801	00	00	20
		908	00	01	97
		810	00	01	22
		811	00	00	56
		807	00	00	34
		808	00	03	83
		809	00	04	08
		786	00	04	27
		787	00	01	48
		788	00	01	36
		789	00	00	90
		790	00	00	20
		795	00	00	20
		794	00	00	53
		793	00	01	72
		792	00	11	07
		775	00	00	20
		774	00	04	27
		754	00	00	20
		773	00	01	67
		756	00	01	89
		758	00	04	93
		741	00	00	74
		734	00	00	69
		717	00	11	10
		716	00	03	37
		714	00	01	28
		713	00	00	68
		702	00	17	10
		703	00	00	20
		705	00	00	28

(1)	(2)	(3)	(4)	(5)	(6)
सुताहटा - II	किसमत शिवरामनगर - 94	698	00	03	55
		697	00	01	79
		707	00	02	65
		696	00	05	18
		695	00	06	03
		685	00	02	09
		686	00	02	58
		687	00	01	89
		688	00	01	36
		690	00	02	19
		654	00	06	08
		655	00	07	33
		657	00	02	63
		656	00	05	88
		658	00	07	75
		1342	00	08	37
		1341	00	00	20
		1343	00	02	48
		1346	00	06	28
		1347	00	01	31
सुताहटा - II	चाऊलखोला - 93	2500	00	00	66
		2501	00	28	29
		2515	00	05	63
		2516	00	04	57
		2517	00	06	00
		2518	00	00	20
		2519	00	03	65
		2520	00	03	29
		2311	00	01	01
		2350	00	01	31
		2351	00	07	60
		2356	00	00	55
		2353	00	03	98
		2352	00	02	50
		2367	00	03	87
		2358	00	00	49

(1)	(2)	(3)	(4)	(5)	(6)
सुताहटा - II	चाऊलखोला - 93	2366	00	01	78
		2365	00	01	45
		2363	00	03	67
		2361	00	00	57
		2411	00	01	19
		2362	00	04	04
		2412	00	12	98
		2414	00	00	20
		2415	00	00	20
		2418	00	06	01
		2417	00	06	56
		1543	00	14	88
		1542	00	00	22
		1522	00	05	56
		1521	00	03	52
		1520	00	03	35
		1519	00	05	10
		1517	00	03	61
		1555	00	03	18
		1516	00	00	77
		1556	00	07	92
		1510	00	10	08
		1509	00	02	44
		1594	00	00	20
		1595	00	00	67
		1508	00	00	93
		1596	00	02	27
		1597	00	05	29
		1507	00	00	35
		1506	00	09	11
		1598	00	01	64
		1412	00	01	22
		2703	00	14	79
		1445	00	01	37
		1440	00	07	70
		1443	00	00	20

(1)	(2)	(3)	(4)	(5)	(6)
सुताहटा - II	चाऊलखोला - 93	1442	00	03	54
		1441	00	00	96
		1401	00	01	92
सुताहटा - II	बड़बाड़ी - 60	1250	00	00	36
		1249	00	03	27
		1248	00	00	20
		1251	00	03	46
		1240	00	00	94
		1254	00	03	14
		1255	00	02	62
		1256	00	08	26
		1257	00	09	39
		1267	00	07	28
		1293	00	21	62
		1292	00	00	98
		1279	00	03	70
		1288	00	06	35
		1289	00	02	27
		1282	00	07	58
		1281	00	03	80
		1184	00	00	20
		1183	00	02	16
		1283	00	04	22
		1181	00	03	91
		1179	00	01	59
		1180	00	09	04
		1178	00	14	21
		1174	00	00	20
		1173	00	04	55
		1601	00	13	74
		1602	00	00	20
		1602/2853	00	00	48
		1606	00	11	72
		1607	00	06	87
		1623	00	07	53
		1622/2984	00	03	60

(1)	(2)	(3)	(4)	(5)	(6)
सुताहटा - II	बड़बाड़ी - 60	1622	00	11	16
		1621	00	08	41
		1620	00	05	68
		332	00	02	86
		1780	00	03	24
		331	00	19	74
		1781	00	00	27
		1784	00	02	01
		1785	00	01	58
		1786	00	02	59
		1792	00	07	77
		329	00	04	62
		1793	00	06	42
		325	00	05	63
		324	00	07	17
		323	00	04	50
		318	00	00	92
		317	00	11	04
		312	00	16	69
सुताहटा - II	बाड़बाजीतपुर - 59	612	00	00	32
		628	00	02	08
		629	00	02	46
		2585	00	16	24
		626	00	11	09
		624	00	09	96
		326	00	00	20
		313	00	07	99
		325	00	01	12
		314	00	06	78
		315	00	03	61
		317	00	10	90
		2303	00	00	20
		318	00	04	37
		293	00	07	90
		292	00	02	24
		294	00	02	46

(1)	(2)	(3)	(4)	(5)	(6)
सुताहटा - II	बाड़बाजीतपुर - 59	295	00	00	20
		2302	00	06	33
		2301	00	02	24
		289	00	03	91
		288	00	08	06
		2300	00	02	93
		287	00	01	20
		286	00	02	92
		219	00	01	04
		191	00	00	75
		194	00	08	50
		196	00	04	97
		198	00	04	34
		199	00	03	75
		227	00	00	20
		188	00	08	58
		186	00	14	27
		2261	00	08	63
		177	00	00	34
		2262	00	00	75
		2285	00	00	20
		179/2286	00	03	75
		179	00	03	66
		180	00	00	24
		183	00	00	21
		182	00	05	97
		181	00	00	31
		636	00	01	78
		697	00	04	06
		696	00	08	92
		699	00	02	67
		722	00	06	67
		723	00	04	56
		721	00	01	53
		724	00	03	38
		725	00	01	72

(1)	(2)	(3)	(4)	(5)	(6)
सुताहटा - II	बाड़बाजीतपुर – 59	726	00	01	82
		727	00	01	45
		728	00	07	29
		730	00	02	43
		731	00	00	20
		732	00	07	51
		741/2356	00	04	46
		736	00	01	15
		741	00	11	07
		2357	00	00	20
		737	00	02	92
		116	00	02	45
		38	00	03	42
		39	00	03	71
		44	00	03	36
		45	00	07	77
		46	00	01	46
		48	00	03	94
		51	00	03	64
		55	00	03	49
		63	00	01	26
		62	00	07	89
		61	00	00	20
		65	00	08	92
		69	00	09	13
		69/2272	00	01	91
		21	00	03	32
		10	00	02	73
		13	00	12	27
		11	00	00	36
		10/2265	00	02	03
		11/2268	00	04	38
		2	00	01	00
सुताहटा - II	कुनारपुर – 58	2494	00	08	06
		2493	00	04	68
		2492	00	14	43

(1)	(2)	(3)	(4)	(5)	(6)
सुताहटा - II	कुनारपुर - 58	2489	00	08	89
		2490	00	06	02
		1955	00	14	49
		1951/3619	00	03	24
		1938	00	04	65
		1950	00	01	50
		1949	00	01	83
		1948	00	04	01
		1939	00	02	15
		1942	00	14	12
		1932	00	04	62
		1931	00	04	40
		1929	00	10	33
		1928	00	07	65
		1927	00	06	50
		1926	00	04	47
		1904	00	05	55
		1907	00	00	20
		1272	00	06	92
		1271	00	03	62
		1270	00	02	00
		1269	00	02	00
		1268	00	02	57
		1267	00	03	14
		1264	00	04	38
		1262	00	03	41
		1282	00	01	99
		1283	00	06	17
		1287	00	03	43
		1285	00	01	67
		1286	00	05	72
		1292	00	02	14
		1435	00	02	61
		1434	00	01	63
		1325	00	02	79
		1324	00	01	36

(1)	(2)	(3)	(4)	(5)	(6)
सुताहटा - II	कुनारपुर - 58	1323	00	01	80
		1322	00	00	38
		1326	00	00	27
		1327	00	01	23
		1328	00	01	38
		1319	00	02	08
		1318	00	01	88
		1330	00	00	20
		1331	00	02	50
		1317	00	01	07
		1315	00	00	20
		1332	00	01	70
		1334	00	01	71
		1336	00	06	04
		776	00	02	49
		3419	00	00	20
		710	00	05	85
		711	00	01	73
		712	00	03	73
		3277	00	00	20
		714	00	02	03
		713	00	00	70
		765	00	04	38
		764	00	03	10
		3470	00	00	20
		3472	00	00	79
		763	00	01	20
		627	00	00	51
		741	00	03	11
		740	00	02	07
		736	00	03	17
		737	00	02	39
		504	00	01	34
		503	00	00	62
		502	00	00	78
		3368	00	01	08

(1)	(2)	(3)	(4)	(5)	(6)
सुताहटा - II	कुनारपुर - 58	501	00	02	51
		500	00	01	83
		499	00	06	20
		498	00	00	36
		490	00	06	99
		491	00	00	53
		488	00	00	20
		487	00	10	05
		486	00	02	67
		493	00	00	44
		422	00	00	36
		3348	00	01	62
		423	00	03	51
		3349	00	01	69
		428	00	03	89
		427	00	02	28
		426	00	02	65
		363	00	01	75
		430	00	00	44
		345	00	05	69
		344	00	03	77
		343	00	03	42
		342	00	01	97
		348	00	00	20
		340	00	05	50
		339	00	01	32
		298	00	03	01
		295	00	02	14
		296	00	00	20
		294	00	01	97
		293	00	00	64
		292	00	02	95
		299	00	01	10
		290	00	01	52
		257	00	00	82
		258	00	01	62

(1)	(2)	(3)	(4)	(5)	(6)
सुताहटा - II	कुनारपुर – 58	256	00	04	02
		254	00	00	43
		3782	00	02	30
		250	00	01	47
		251	00	00	20
		253	00	00	20
		249	00	01	42
		242	00	04	84
		244	00	00	34
		243	00	03	40
		240	00	07	71
		238	00	09	13
		237	00	00	20
		234	00	07	34
		232	00	05	59

[फा. सं. आर-11025(11)/22/2018-ओआर-I/ई-27779]

शान्तनु धर, अवर सचिव

New Delhi, the 17th June, 2019

S. O. 991 .—Whereas by the notification of the Government of the India in the Ministry of Petroleum and Natural Gas S. O. No. 102 Dated 10th January, 2019, published in the Gazette of India No. 3, dated 13th January, 2019 to 19th January, 2019 issued under sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), (hereinafter referred to as the said Act) the Central Government declared its intention to acquire the right of user in the land specified in the Schedule appended to that notification for the purpose of laying “Haldia-Barauni Pipeline Systems Project” for the transportation of Crude Oil in Purba Medinipur District in the state of West Bengal by Indian Oil Corporation Limited;

And whereas copies of the said Gazette notification were made available to the public up to 19th March 2019;

And whereas the Competent Authority has under sub-section (1) of section 6 of the said Act submitted report to the Central Government;

And whereas the central Government, after considering the said report and on being satisfied that the said land is required for laying the pipeline, has decided to acquire right of user therein;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 6 of the said Act, the Central Government hereby declares that the right of user in the land specified in the Schedule appended to this notification is hereby acquired for laying the pipeline;

And further, in exercise of the powers conferred by sub-section (4) of section 6 of the said Act, the Central Government hereby directs that the right of user in the said land for laying the pipeline shall, instead of vesting in the Central Government, vest on the date publication of the declaration, in Indian Oil Corporation Limited, free from all encumbrances.

Indian Oil Corporation Limited shall be exclusively liable for any compensation in terms of Section 10 of the P&MP Act, 1962 and no suit, claim or legal proceeding would lie against the Central Government on any matter relating to the pipeline.

SCHEDULE

District : Purba Medinipur			State : West Bengal		
Police Station	Name of Mouza	Survey No.	Area		
			Hectare	Are	Square Metre
(1)	(2)	(3)	(4)	(5)	(6)
Sutahata - II	Kismat Shibramnagar - 94	1681	00	00	86
		1682	00	02	25
		1675	00	00	54
		1674	00	00	79
		1673	00	01	99
		1672	00	01	52
		1671	00	01	38
		1664	00	01	43
		1648	00	00	25
		1652	00	02	12
		1649	00	03	25
		1650	00	00	41
		1631	00	00	84
		1630	00	01	20
		1130	00	01	94
		1131	00	04	86
		1134	00	00	89
		1137	00	00	20
		1135	00	01	23
		1136	00	01	90
		1140	00	00	49
		1309	00	10	01
		1308	00	00	71
		1318	00	11	33
		1326	00	03	29
		1330	00	00	20
		1328	00	03	66
		1329	00	06	46
		1348	00	00	20
		1331	00	10	42
		1295	00	09	18
		1297	00	09	93
		1282	00	11	78
		1283	00	00	73
		1220	00	00	89
		977	00	01	17
		976	00	10	93
		966	00	05	10
		983	00	05	29
		965	00	05	80
		962	00	05	56
		956	00	02	87
		955	00	05	77
		954	00	10	34
		939	00	01	97
		917	00	11	49
		916	00	03	37
		905	00	09	55
		903	00	01	93
		814	00	00	62
		902	00	02	40
		815	00	00	33
		816	00	01	40
		817	00	02	91

(1)	(2)	(3)	(4)	(5)	(6)
Sutahata - II	Kismat Shibramnagar - 94	818	00	06	24
		2800	00	01	00
		821	00	00	20
		2801	00	00	20
		908	00	01	97
		810	00	01	22
		811	00	00	56
		807	00	00	34
		808	00	03	83
		809	00	04	08
		786	00	04	27
		787	00	01	48
		788	00	01	36
		789	00	00	90
		790	00	00	20
		795	00	00	20
		794	00	00	53
		793	00	01	72
		792	00	11	07
		775	00	00	20
		774	00	04	27
		754	00	00	20
		773	00	01	67
		756	00	01	89
		758	00	04	93
		741	00	00	74
		734	00	00	69
		717	00	11	10
		716	00	03	37
		714	00	01	28
		713	00	00	68
		702	00	17	10
		703	00	00	20
		705	00	00	28
		698	00	03	55
		697	00	01	79
		707	00	02	65
		696	00	05	18
		695	00	06	03
		685	00	02	09
		686	00	02	58
		687	00	01	89
		688	00	01	36
		690	00	02	19
		654	00	06	08
		655	00	07	33
		657	00	02	63
		656	00	05	88
		658	00	07	75
		1342	00	08	37
		1341	00	00	20
		1343	00	02	48
		1346	00	06	28
		1347	00	01	31
Sutahata - II	Chaulkhola - 93	2500	00	00	66
		2501	00	28	29
		2515	00	05	63
		2516	00	04	57
		2517	00	06	00
		2518	00	00	20
		2519	00	03	65

(1)	(2)	(3)	(4)	(5)	(6)
Sutahata - II	Chaulkhola - 93	2520	00	03	29
		2311	00	01	01
		2350	00	01	31
		2351	00	07	60
		2356	00	00	55
		2353	00	03	98
		2352	00	02	50
		2367	00	03	87
		2358	00	00	49
		2366	00	01	78
		2365	00	01	45
		2363	00	03	67
		2361	00	00	57
		2411	00	01	19
		2362	00	04	04
		2412	00	12	98
		2414	00	00	20
		2415	00	00	20
		2418	00	06	01
		2417	00	06	56
		1543	00	14	88
		1542	00	00	22
		1522	00	05	56
		1521	00	03	52
		1520	00	03	35
		1519	00	05	10
		1517	00	03	61
		1555	00	03	18
		1516	00	00	77
		1556	00	07	92
		1510	00	10	08
		1509	00	02	44
		1594	00	00	20
		1595	00	00	67
		1508	00	00	93
		1596	00	02	27
		1597	00	05	29
		1507	00	00	35
		1506	00	09	11
		1598	00	01	64
		1412	00	01	22
		2703	00	14	79
		1445	00	01	37
		1440	00	07	70
		1443	00	00	20
		1442	00	03	54
		1441	00	00	96
		1401	00	01	92
Sutahata - II	Barabari - 60	1250	00	00	36
		1249	00	03	27
		1248	00	00	20
		1251	00	03	46
		1240	00	00	94
		1254	00	03	14
		1255	00	02	62
		1256	00	08	26
		1257	00	09	39
		1267	00	07	28
		1293	00	21	62
		1292	00	00	98
		1279	00	03	70

(1)	(2)	(3)	(4)	(5)	(6)
Sutahata - II	Barabari - 60	1288	00	06	35
		1289	00	02	27
		1282	00	07	58
		1281	00	03	80
		1184	00	00	20
		1183	00	02	16
		1283	00	04	22
		1181	00	03	91
		1179	00	01	59
		1180	00	09	04
		1178	00	14	21
		1174	00	00	20
		1173	00	04	55
		1601	00	13	74
		1602	00	00	20
		1602/2853	00	00	48
		1606	00	11	72
		1607	00	06	87
		1623	00	07	53
		1622/2984	00	03	60
		1622	00	11	16
		1621	00	08	41
		1620	00	05	68
		332	00	02	86
		1780	00	03	24
		331	00	19	74
		1781	00	00	27
		1784	00	02	01
		1785	00	01	58
		1786	00	02	59
		1792	00	07	77
		329	00	04	62
		1793	00	06	42
		325	00	05	63
		324	00	07	17
		323	00	04	50
		318	00	00	92
		317	00	11	04
		312	00	16	69
Sutahata - II	Bar Bajitpur - 59	612	00	00	32
		628	00	02	08
		629	00	02	46
		2585	00	16	24
		626	00	11	09
		624	00	09	96
		326	00	00	20
		313	00	07	99
		325	00	01	12
		314	00	06	78
		315	00	03	61
		317	00	10	90
		2303	00	00	20
		318	00	04	37
		293	00	07	90
		292	00	02	24
		294	00	02	46
		295	00	00	20
		2302	00	06	33
		2301	00	02	24
		289	00	03	91
		288	00	08	06

(1)	(2)	(3)	(4)	(5)	(6)
Sutahata - II	Bar Bajitpur - 59	2300	00	02	93
		287	00	01	20
		286	00	02	92
		219	00	01	04
		191	00	00	75
		194	00	08	50
		196	00	04	97
		198	00	04	34
		199	00	03	75
		227	00	00	20
		188	00	08	58
		186	00	14	27
		2261	00	08	63
		177	00	00	34
		2262	00	00	75
		2285	00	00	20
		179/2286	00	03	75
		179	00	03	66
		180	00	00	24
		183	00	00	21
		182	00	05	97
		181	00	00	31
		636	00	01	78
		697	00	04	06
		696	00	08	92
		699	00	02	67
		722	00	06	67
		723	00	04	56
		721	00	01	53
		724	00	03	38
		725	00	01	72
		726	00	01	82
		727	00	01	45
		728	00	07	29
		730	00	02	43
		731	00	00	20
		732	00	07	51
		741/2356	00	04	46
		736	00	01	15
		741	00	11	07
		2357	00	00	20
		737	00	02	92
		116	00	02	45
		38	00	03	42
		39	00	03	71
		44	00	03	36
		45	00	07	77
		46	00	01	46
		48	00	03	94
		51	00	03	64
		55	00	03	49
		63	00	01	26
		62	00	07	89
		61	00	00	20
		65	00	08	92
		69	00	09	13
		69/2272	00	01	91
		21	00	03	32
		10	00	02	73
		13	00	12	27
		11	00	00	36

(1)	(2)	(3)	(4)	(5)	(6)
Sutahata - II	Bar Bajitpur - 59	10/2265	00	02	03
		11/2268	00	04	38
		2	00	01	00
Sutahata - II	Kunarpur - 58	2494	00	08	06
		2493	00	04	68
		2492	00	14	43
		2489	00	08	89
		2490	00	06	02
		1955	00	14	49
		1951/3619	00	03	24
		1938	00	04	65
		1950	00	01	50
		1949	00	01	83
		1948	00	04	01
		1942	00	14	12
		1932	00	04	62
		1931	00	04	40
		1929	00	10	33
		1928	00	07	65
		1927	00	06	50
		1926	00	04	47
		1904	00	05	55
		1907	00	00	20
		1272	00	06	92
		1271	00	03	62
		1270	00	02	00
		1269	00	02	00
		1268	00	02	57
		1267	00	03	14
		1264	00	04	38
		1262	00	03	41
		1282	00	01	99
		1283	00	06	17
		1287	00	03	43
		1285	00	01	67
		1286	00	05	72
		1292	00	02	14
		1435	00	02	61
		1434	00	01	63
		1325	00	02	79
		1324	00	01	36
		1323	00	01	80
		1322	00	00	38
		1326	00	00	27
		1327	00	01	23
		1328	00	01	38
		1319	00	02	08
		1318	00	01	88
		1330	00	00	20
		1331	00	02	50
		1317	00	01	07
		1315	00	00	20
		1332	00	01	70
		1334	00	01	71
		1336	00	06	04
		776	00	02	49
		3419	00	00	20
		710	00	05	85
		711	00	01	73
		712	00	03	73
		3277	00	00	20

(1)	(2)	(3)	(4)	(5)	(6)
Sutahata - II	Kunarpur - 58	714	00	02	03
		713	00	00	70
		765	00	04	38
		764	00	03	10
		3470	00	00	20
		3472	00	00	79
		763	00	01	20
		627	00	00	51
		741	00	03	11
		740	00	02	07
		736	00	03	17
		737	00	02	39
		504	00	01	34
		503	00	00	62
		502	00	00	78
		3368	00	01	08
		501	00	02	51
		500	00	01	83
		499	00	06	20
		498	00	00	36
		490	00	06	99
		491	00	00	53
		488	00	00	20
		487	00	10	05
		486	00	02	67
		493	00	00	44
		422	00	00	36
		3348	00	01	62
		423	00	03	51
		3349	00	01	69
		428	00	03	89
		427	00	02	28
		426	00	02	65
		363	00	01	75
		430	00	00	44
		345	00	05	69
		344	00	03	77
		343	00	03	42
		342	00	01	97
		348	00	00	20
		340	00	05	50
		339	00	01	32
		298	00	03	01
		295	00	02	14
		296	00	00	20
		294	00	01	97
		293	00	00	64
		292	00	02	95
		299	00	01	10
		290	00	01	52
		257	00	00	82
		258	00	01	62
		256	00	04	02
		254	00	00	43
		3782	00	02	30
		250	00	01	47
		251	00	00	20
		253	00	00	20
		249	00	01	42
		242	00	04	84
		244	00	00	34

(1)	(2)	(3)	(4)	(5)	(6)
Sutahata - II	Kunarpur - 58	243	00	03	40
		240	00	07	71
		238	00	09	13
		237	00	00	20
		234	00	07	34
		232	00	05	59

[F. No. R-11025(11)/22/2018-OR-I/E-27779]

SANTANU DHAR, Under Secy.

नई दिल्ली, 17 जून, 2019

का. आ. 992.—केन्द्रीय सरकार ने पेट्रोलियम और खनिज पाइपलाइंस (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) (जिसे इसमें इसके पश्चात उक्त अधिनियम कहा गया है) की धारा 3 की उपधारा (1) के अधीन जारी की गई भारत सरकार के पेट्रोलियम और प्रकृतिक गैस मंत्रालय की अधिसूचना संख्या का० आ० 185, तारीख 30 जनवरी 2018, भारत के राजपत्र संख्या 5 तारीख 28 जनवरी से 03 फरवरी 2018 में प्रकाशित की गई थी, तथा अधिसूचना संख्या का. आ. 1762, तारीख 7 दिसम्बर 2018, भारत के राजपत्र संख्या 49 तारीख 9 दिसम्बर 2018 से 15 दिसम्बर 2018, में प्रकाशित की गई थी। इस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में पश्चिम बंगाल राज्य में “हल्दीया-बरौनी पाइपलाइन सिस्टम्स परियोजना” हेतु जिला पूर्व मेदिनीपुर में कच्चे तेल के परिवहन हेतु इंडियन ऑयल कॉर्पोरेशन लिमिटेड द्वारा पाइपलाइन बिछाने के प्रयोजन के लिए उपयोग के अधिकार के अर्जन के अपने आशय की घोषणा की थी।

और उक्त राजपत्र अधिसूचना की सूचना संबन्धित भू-स्वामियों को तारीख 18 अक्टूबर 2018 तक उपलब्ध करा दी गई थी, और सक्षम प्राधिकारी ने उक्त अधिनियम की धारा 6 की उपधारा (1) के अधीन केन्द्रीय सरकार को रिपोर्ट दे दी है,

और केन्द्रीय सरकार ने, उक्त रिपोर्ट पर विचार करने के पश्चात और यह समाधान हो जाने पर कि उक्त भूमि पाइपलाइन बिछाने के लिए अपेक्षित है, उसमें उपयोग के अधिकार के अर्जन करने का विनिश्चय किया है;

अतः अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह घोषणा करती है की इस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में पाइपलाइन बिछाने के लिए उपयोग के अधिकार का अर्जन किया जाए,

और केन्द्रीय सरकार उक्त अधिनियम की धारा 6 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निर्देश देती है कि उक्त भूमि में उपयोग के अधिकार इस घोषणा के प्रकाशन की तारीख से केन्द्रीय सरकार में निहित होने के बजाए, सभी विल्लंगमो से मुक्त होकर इंडियन ऑयल कॉर्पोरेशन लिमिटेड में निहित होगी,

पेट्रोलियम और खनिज पाइपलाइन अधिनियम, 1962 की धारा 10 के अधीन किसी भी क्षतिपूर्ति के लिए इंडियन ऑयल कॉर्पोरेशन लिमिटेड पूर्णतया उत्तरदाई होगा और पाइपलाइन से संबन्धित किसी भी मामले पर केन्द्रीय सरकार के विरुद्ध कोई दावा या कानूनी कार्यवाही नहीं हो सकेगी।

अनुसूची

जिला : पूर्व मेदिनीपुर			राज्य : पश्चिम बंगाल		
थाना	मौज़ा का नाम	सर्वेनम्बर	क्षेत्रफल		
			हेक्टेयर	एयर	वर्ग मीटर
(1)	(2)	(3)	(4)	(5)	(6)
सुताहटा - I	डिह शिवरामनगर - 95	415	00	09	55
		416	00	03	17
		467	00	00	60
		455	00	01	51
		468	00	03	32
		470	00	00	67
		471	00	04	83
		472	00	07	05
		540	00	04	55
		541	00	02	04
		542	00	01	93
		563	00	03	39
		564	00	02	66
		570	00	01	80
		569	00	01	89
		568	00	01	60
		571	00	00	31
		567	00	07	54
		591	00	12	41
		592	00	06	95
		625	00	02	67
		624	00	03	96
		626	00	06	19
		629	00	01	30
		627	00	05	66
		628	00	02	49
		630	00	02	05
		871	00	03	41
		872	00	07	56
		870	00	01	78
		873	00	07	89

(1)	(2)	(3)	(4)	(5)	(6)
सुताहटा - I	डिह शिवरामनगर - 95	878	00	00	30
		877	00	10	43
		876	00	00	37
		836	00	07	94
		837	00	08	16
		789	00	00	82
		801	00	12	62
		802	00	00	95
सुताहटा - I	राजारामपुर - 102	2163	00	00	27
		2162	00	00	20
		2158	00	02	91
		2159	00	04	18
		2161	00	03	61
		2151	00	00	20
		2152	00	02	23
		2153	00	01	04
		2150	00	00	99
		2149	00	02	59
		2148	00	04	14
		2146	00	00	77
		2145	00	09	17
		2144	00	00	83
		2120	00	00	82
		2121	00	06	55
		2122	00	01	52
		2114	00	03	39
		2115	00	03	01
		2113	00	04	40
		2399	00	00	20
		2396	00	08	94
		2112	00	00	93
		2089	00	02	14
		2090	00	06	69
		2397	00	01	68
		2091	00	02	71
		852	00	01	03

(1)	(2)	(3)	(4)	(5)	(6)
सुताहटा - I	राजारामपुर - 102	1932	00	02	98
		1933	00	02	96
		2376	00	00	20
		1927	00	07	06
		1936	00	15	45
		1943	00	14	40
		1912	00	06	60
		1913	00	02	07
		1914	00	03	00
		1900	00	08	37
		1899	00	03	43
		1843	00	06	06
		1836	00	09	40
		1837	00	00	62
		1835	00	02	90
		914	00	01	03
		1838	00	00	71
		1053	00	03	57
		1052	00	00	20
		1051	00	00	26
		1054	00	05	82
		1055	00	10	27
		1049	00	00	20
		1060	00	01	40
		1061	00	02	40
		1048	00	00	79
		1024	00	03	81
		1025	00	04	09
		1026	00	00	49
		2325	00	04	32
		1027	00	02	32
		1028	00	00	20
		1022	00	00	74
		1021	00	02	67
		1029	00	05	97
		1019	00	02	11

(1)	(2)	(3)	(4)	(5)	(6)
सुताहटा - I	राजारामपुर - 102	1018	00	02	88
		1016	00	02	83
		1017	00	01	85
		1012	00	09	43
		1013	00	00	81
		2229	00	09	50
		1010	00	07	26
		979	00	06	47
		418	00	02	30
		417	00	02	85
		978	00	00	77
		2279	00	04	69
		397	00	02	31
		395	00	03	18
		393/2281	00	04	99
		396	00	00	35
		393/2282	00	00	58
		393	00	01	22
		394	00	00	20
		386/2280	00	00	21
		386	00	03	70
		392	00	00	20
		387	00	02	96
		388	00	01	78
		371	00	01	16
		383	00	04	64
		382	00	02	51
		384	00	01	18
सुताहटा - II	ईस्वरदाहाजलपाई - 53	114	00	02	19
		115	00	00	68
		113	00	03	59
		137	00	00	94
		151	00	06	04
		154	00	08	07
		155	00	04	04
		153	00	00	22

(1)	(2)	(3)	(4)	(5)	(6)
सुताहटा - II	ईस्वरदाहाजलपाई - 53	156	00	01	32
		157	00	03	68
		159	00	05	46
		163	00	00	20
		160	00	04	59
		161	00	02	40
		195	00	04	71
		194	00	00	20
		196	00	01	67
		199	00	01	76
		200	00	03	15
		62	00	05	54
		203	00	01	82
		204	00	00	35
		102	00	00	45
		101	00	09	76
		100	00	01	91
		99	00	06	95
		98	00	01	13
		97	00	02	28
		96	00	02	29
		95	00	03	30
		94	00	03	09
		93	00	02	99
		89	00	06	67
		88	00	03	36
		83	00	09	55
		82	00	00	20
		70	00	06	89
		66	00	01	68
		69	00	07	17
		71	00	06	79
		3	00	00	80
		1	00	00	78
		16	00	01	47
		15/1378	00	00	47

(1)	(2)	(3)	(4)	(5)	(6)
सुताहटा - II	ईस्वरदाहाजलपाई - 53	15	00	06	97
		17	00	08	21
नन्दकुमार	कल्यानपुर - 125	2161	00	07	48
		2164	00	01	36
		2163	00	00	20
		2162	00	00	67
		2165	00	01	59
		2166	00	00	35
		2167	00	02	19
		2168	00	03	01
		2169	00	00	62
		2105	00	07	14
		2107	00	00	86
		2108	00	02	36
		2104	00	00	20
		2101	00	02	49
		2100	00	00	20
		2102	00	00	28
		2094	00	04	83
		2607	00	04	07
		2611	00	06	16
		2613	00	00	94
		2612	00	03	71
		2635	00	03	67
		2634	00	01	16
		2633	00	01	74
		2680	00	00	20
		2682	00	00	20
		2683	00	01	20
		2684	00	02	87
		2687	00	00	54
		2675	00	01	32
		2688	00	01	29
		2674	00	03	14
		2672	00	01	25
		2694	00	00	82

(1)	(2)	(3)	(4)	(5)	(6)
नन्दकुमार	कल्यानपुर - 125	2695	00	02	29
		2696	00	02	73
		2670	00	00	41
		2710	00	02	13
		2711	00	01	81
		2712	00	00	20
		2674	00	00	97
		2713	00	02	04
		2709	00	01	57
		2717	00	02	73
		2716	00	00	27
		2719	00	00	20
		2718	00	02	93
		2720	00	00	41
		2721	00	00	44
		1385	00	02	40
		1384	00	04	44
		1383	00	01	18
		1444	00	01	28
		1379	00	03	98
		1445	00	00	20
		1378	00	01	87
		1377	00	03	33
		1373	00	00	20
		1452	00	02	37
		1460	00	00	24
		1454	00	03	26
		1457	00	00	20
		1456	00	02	12
		1491	00	03	43
		1490	00	00	91
		1504	00	00	43
		1492	00	00	20
		1493	00	03	62
		1497	00	00	32
		1496	00	00	89

(1)	(2)	(3)	(4)	(5)	(6)
तन्दकुमार	कल्यानपुर - 125	1494	00	00	58
		1495	00	01	70
		1509	00	06	61
		1507	00	00	20
		1508	00	03	56
		1510	00	00	79
		1511	00	04	26
		1520	00	02	97
		1329	00	01	48
		651	00	01	08
		649	00	05	07
		657	00	06	49
		637	00	04	28
		636	00	02	55
		510	00	01	34
		490	00	00	39
		491	00	04	45
		489	00	00	66
		492	00	03	82
		496	00	00	33
		497	00	00	53
		506	00	00	20
		498	00	01	92
		499	00	01	73
		500	00	05	51
		503	00	00	87
		502	00	00	32
		391	00	04	17
		392	00	02	69
		390	00	02	42
		369	00	01	45

(1)	(2)	(3)	(4)	(5)	(6)
नन्दकुमार	कल्यानपुर - 125	370	00	01	16
		388	00	00	91
		386	00	03	00
		387	00	02	53
		4	00	00	20
		3	00	00	64

[फा. सं. आर-11025(11)/22/2018-ओआर-I/ई-27779]

शान्तनु धर, अवर सचिव

New Delhi, the 17th June, 2019

S. O. 992 .—Whereas by the notification of the Government of the India in the Ministry of Petroleum and Natural Gas S. O. No. 185 dated 30th January, 2018, published in the Gazette of the India No. 5 dated 28th January to 3rd February, 2018 and S.O. No. 1762 dated 7th December, 2018 published in the Gazette of India No. 49, dated 9th December to 15th December, 2019 issued under sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), (hereinafter referred to as the said Act) the Central Government declared its intention to acquire the right of user in the land specified in the Schedule appended to that notification for the purpose of laying “Haldia-Barauni Pipeline Systems Project” for the transportation of Crude Oil in Purba Medinipur District in the state of West Bengal by Indian Oil Corporation Limited.

And whereas copies of the said Gazette notification were made available to the public up to 18th October 2018.

And whereas the Competent Authority has under sub-section (1) of section 6 of the said Act submitted report to the Central Government;

And whereas the central Government, after considering the said report and on being satisfied that the said land is required for laying the pipeline, has decided to acquire right of user therein;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 6 of the said Act, the Central Government hereby declares that the right of user in the land specified in the Schedule appended to this notification is hereby acquired for laying the pipeline;

And further, in exercise of the powers conferred by sub-section (4) of section 6 of the said Act, the Central Government hereby directs that the right of user in the said land for laying the pipeline shall, instead of vesting in the Central Government, vest on the date publication of the declaration, in Indian Oil Corporation Limited, free from all encumbrances.

Indian Oil Corporation Limited shall be exclusively liable for any compensation in terms of Section 10 of the P&MP Act, 1962 and no suit, claim or legal proceeding would lie against the Central Government on any matter relating to the pipeline.

SCHEDULE

District : Purba Medinipur			State : West Bengal		
Police Station	Name of Mouza	Survey No.	Area		
			Hectare	Are	Square Metre
(1) Sutahata - I	(2) Dih Shibramnagar - 95	(3) 415	(4) 00	(5) 09	(6) 55
		416	00	03	17
		467	00	00	60
		455	00	01	51
		468	00	03	32
		470	00	00	67

(1)	(2)	(3)	(4)	(5)	(6)
Sutahata - I	Dih Shibramnagar - 95	471	00	04	83
		472	00	07	05
		540	00	04	55
		541	00	02	04
		542	00	01	93
		563	00	03	39
		564	00	02	66
		570	00	01	80
		569	00	01	89
		568	00	01	60
		571	00	00	31
		567	00	07	54
		591	00	12	41
		592	00	06	95
		625	00	02	67
		624	00	03	96
		626	00	06	19
		629	00	01	30
		627	00	05	66
		628	00	02	49
		630	00	02	05
		871	00	3	41
		872	00	07	56
		870	00	01	78
		873	00	07	89
		878	00	00	30
		877	00	10	43
		876	00	00	37
		836	00	07	94
		837	00	08	16
		789	00	00	82
		801	00	12	62
		802	00	00	95
Sutahata - I	Rajarampur - 102	2163	00	00	27
		2162	00	00	20
		2158	00	02	91
		2159	00	04	18
		2161	00	03	61
		2151	00	00	20
		2152	00	02	23
		2153	00	01	04
		2150	00	00	99
		2149	00	02	59
		2148	00	04	14
		2146	00	00	77
		2145	00	09	17
		2144	00	00	83
		2120	00	00	82
		2121	00	06	55
		2122	00	01	52
		2114	00	03	39
		2115	00	03	01
		2113	00	04	40
		2399	00	00	20
		2396	00	08	94
		2112	00	00	93
		2089	00	02	14
		2090	00	06	69
		2397	00	01	68
		2091	00	02	71
		852	00	01	03

(1)	(2)	(3)	(4)	(5)	(6)
Sutahata - I	Rajarampur - 102	1932	00	02	98
		1933	00	02	96
		2376	00	00	20
		1927	00	07	06
		1936	00	15	45
		1943	00	14	40
		1912	00	06	60
		1913	00	02	07
		1914	00	03	00
		1900	00	08	37
		1899	00	03	43
		1843	00	06	06
		1836	00	09	40
		1837	00	00	62
		1835	00	02	90
		914	00	01	03
		1838	00	00	71
		1053	00	03	57
		1052	00	00	20
		1051	00	00	26
		1054	00	05	82
		1055	00	10	27
		1049	00	00	20
		1060	00	01	40
		1061	00	02	40
		1048	00	00	79
		1024	00	03	81
		1025	00	04	09
		1026	00	00	49
		2325	00	04	32
		1027	00	02	32
		1028	00	00	20
		1022	00	00	74
		1021	00	02	67
		1029	00	05	97
		1019	00	02	11
		1018	00	02	88
		1016	00	02	83
		1017	00	01	85
		1012	00	09	43
		1013	00	00	81
		2229	00	09	50
		1010	00	07	26
		979	00	06	47
		418	00	02	30
		417	00	02	85
		978	00	00	77
		2279	00	04	69
		397	00	02	31
		395	00	03	18
		393/2281	00	04	99
		396	00	00	35
		393/2282	00	00	58
		393	00	01	22
		394	00	00	20
		386/2280	00	00	21
		386	00	03	70
		392	00	00	20
		387	00	02	96
		388	00	01	78
		371	00	01	16

(1)	(2)	(3)	(4)	(5)	(6)
Sutahata - I	Rajarampur - 102	383	00	04	64
		382	00	02	51
Sutahata - II	Iswardahajalpai - 53	384	00	01	18
		114	00	02	19
		115	00	00	68
		113	00	03	59
		137	00	00	94
		151	00	06	04
		154	00	08	07
		155	00	04	04
		153	00	00	22
		156	00	01	32
		157	00	03	68
		159	00	05	46
		163	00	00	20
		160	00	04	59
		161	00	02	40
		195	00	04	71
		194	00	00	20
		196	00	01	67
		199	00	01	76
		200	00	03	15
		62	00	05	54
		203	00	01	82
		204	00	00	35
		102	00	00	45
		101	00	09	76
		100	00	01	91
		99	00	06	95
		98	00	01	13
		97	00	02	28
		96	00	02	29
		95	00	03	30
		94	00	03	09
		93	00	02	99
		89	00	06	67
		88	00	03	36
		83	00	09	55
		82	00	00	20
		70	00	06	89
		66	00	01	68
		69	00	07	17
		71	00	06	79
		3	00	00	80
		1	00	00	78
		16	00	01	47
		15/1378	00	00	47
		15	00	06	97
		17	00	08	21
Nandakumar	Kalyanpur - 125	2161	00	07	48
		2164	00	01	36
		2163	00	00	20
		2162	00	00	67
		2165	00	01	59
		2166	00	00	35
		2167	00	02	19
		2168	00	03	01
		2169	00	00	62
		2105	00	07	14
		2107	00	00	86
		2108	00	02	36

(1)	(2)	(3)	(4)	(5)	(6)
Nandakumar	Kalyanpur - 125	2104	00	00	20
		2101	00	02	49
		2100	00	00	20
		2102	00	00	28
		2094	00	04	83
		2607	00	04	07
		2611	00	06	16
		2613	00	00	94
		2612	00	03	71
		2635	00	03	67
		2634	00	01	16
		2633	00	01	74
		2680	00	00	20
		2682	00	00	20
		2683	00	01	20
		2684	00	02	87
		2687	00	00	54
		2675	00	01	32
		2688	00	01	29
		2674	00	03	14
		2672	00	01	25
		2694	00	00	82
		2695	00	02	29
		2696	00	02	73
		2670	00	00	41
		2710	00	02	13
		2711	00	01	81
		2712	00	00	20
		2674	00	00	97
		2713	00	02	04
		2709	00	01	57
		2717	00	02	73
		2716	00	00	27
		2719	00	00	20
		2718	00	02	93
		2720	00	00	41
		2721	00	00	44
		1385	00	02	40
		1384	00	04	44
		1383	00	01	18
		1444	00	01	28
		1379	00	03	98
		1445	00	00	20
		1378	00	01	87
		1377	00	03	33
		1373	00	00	20
		1452	00	02	37
		1460	00	00	24
		1454	00	03	26
		1457	00	00	20
		1456	00	02	12
		1491	00	03	43
		1490	00	00	91
		1504	00	00	43
		1492	00	00	20
		1493	00	03	62
		1497	00	00	32
		1496	00	00	89
		1494	00	00	58
		1495	00	01	70
		1509	00	06	61

(1)	(2)	(3)	(4)	(5)	(6)
Nandakumar	Kalyanpur - 125	1507	00	00	20
		1508	00	03	56
		1510	00	00	79
		1511	00	04	26
		1520	00	02	97
		1329	00	01	48
		651	00	01	08
		649	00	05	07
		657	00	06	49
		637	00	04	28
		636	00	02	55
		510	00	01	34
		490	00	00	39
		491	00	04	45
		489	00	00	66
		492	00	03	82
		496	00	00	33
		497	00	00	53
		506	00	00	20
		498	00	01	92
		499	00	01	73
		500	00	05	51
		503	00	00	87
		502	00	00	32
		391	00	04	17
		392	00	02	69
		390	00	02	42
		369	00	01	45
		370	00	01	16
		388	00	00	91
		386	00	03	00
		387	00	02	53
		4	00	00	20
		3	00	00	64

[F. No. R-11025(11)/22/2018-OR-I/E-27779]

SANTANU DHAR, Under Secy.

नई दिल्ली, 17 जून, 2019

का. आ. 993.—केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम 1962 (1962 का 50) की धारा 3 की उपधारा (1) के अधीन जारी भारत के राजपत्र के भाग II, खंड 3, उपखंड (ii) के अंतर्गत राजपत्र संख्या 39 तारीख 30/09/ 2018 – 06/10/ 2018 में प्रकाशित, भारत सरकार के पेट्रोलियम एवं प्राकृतिक गैस मंत्रालय की अधिसूचना संख्या का. आ. 1445(अ) तारीख 03/10/ 2018 में केंद्र सरकार निम्नलिखित संशोधन करती है—

अधिसूचना का. आ. 1445(अ) तारीख 03/10/ 2018 में पृष्ठ सं. 5952 के अंग्रेजी पाठ में ग्राम आलुवा ईस्ट (खण्ड सं. 35) के अन्तर्गत प्रकाशित सर्वे नम्बर 21/13 के स्थान पर ग्राम आलुवा ईस्ट (खण्ड सं. 35) सर्वे नम्बर 213/13 पढ़ा व समझा जाए।

[सं. आर-12031/196/2017-ओआर -I/ई-19746]

शान्तनु धर, अवर सचिव

New Delhi, the 17th June, 2019

S.O. 993.—In exercise of the powers conferred sub section (1) of section 3 of Petroleum and Mineral Pipeline (Acquisition of Right of User in Land) Act 1962 (Central Act 50 of 1962) , the Central Government hereby makes the following amendment in the notification of the Govt. of India in the Ministry of Petroleum and Natural Gas SO. 1445 dated 03.10.2018 published in page No. 5952 in Gazette of India No.39 dated 30.09.2018 to 06.10.2018 namely.

In the notification S.O. No. 1445 dated 03.10.2018 published in the Gazette No. 39 dated 03.09.2018 to 06.10.2018 at page No. 5952 Survey No. 21/13 published under Aluva East Village, Block No. 35 shall be considered and read Survey No. 213/13 under Aluva Village, Block No. 35 in English Version.

[No. R-12031/196/2017-OR-I/E-19746]

SANTANU DHAR, Under Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 3 जून, 2019

का.आ. 994.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स महाप्रबंधक, हिंदुस्तान साल्ट्स लिमिटेड, खड़गोडा, सुरेंद्रनगर (गुजरात) और अन्य एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, अहमदाबाद के पंचाट (संदर्भ संख्या 70/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 22.05.2019 को प्राप्त हुए थे।

[सं. एल-42011/41/2014-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 3rd June, 2019

S.O.994.— In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 70/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad, as shown in the Annexure, in the Industrial Dispute between the employers in relation to The General Manager, Hindustan Salts Ltd., Kharagoda, Surendranagar (Gujarat) and Others, and their workmen which were received by the Central Government on 22.05.2019.

[No. L-42011/41/2014-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD**

Present : Pramod Kumar Chaturvedi, Presiding Officer,
CGIT-cum-Labour Court, Ahmedabad,
Dated 02nd May, 2019

Reference: (CGITA) No. 70/2014

The General Manager,
Hindustan Salts Ltd.,
Kharagoda,
Surendranagar (Gujarat)

... First Party

V/s

The Secretary,
New Gujarat Mazdoor Manch,
28-B, Narayan Park, Behind Chandkheda Railway Station,
Sabarmati,
Ahmedabad (Gujarat) – 332424

...Second Party

For the First Party : Shri Girish Parmar

For the Second Party : Shri Hitesh D. Katharotiya

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-42011/41/2014-IR(DU) dated 15.07.2014 referred the dispute for adjudication to the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the demand of the union for regularisation of services of Shri Chandu Karman and 98 others in the establishment of Hindustan Salts Ltd., Kharagoda, Surendranagar is justified? If not, what relief these employees are entitled to?”

1. The reference dates back to 15.07.2014 and received on 31.07.2014 from Ministry of Labour and Employment, New Delhi for adjudication and passing the award.
2. After issuing notice to the parties, the second party union submitted the statement of claim Ex. 4 on 24.06.2016 alleging that the second party union The Secretary, New Gujarat Mazdoor Manch, 28-B, Narayan Park, Behind Chandkheda Railway Station, Sabarmati, Ahmedabad, hereinafter referred to as ‘union’ is registered under Trade Union Act, 1926 and the first party Hindustan Salts Ltd. is registered as company under Company Act, 1956 fully owned and managed by Government of India. The brief facts of the case are that 500 workers have been working in the first party as a member of the second party union. These workers were engaged on temporary basis since long to perform the perennial nature of work; therefore, the union raised a demand for regularisation of said workers on the request of the workmen. The Assistant Labour Commissioner (Central) in the event of failure of conciliation referred the dispute to Government of India which sent this reference to this Tribunal for adjudication. These 99 workers have been working with the first party since last 25 to 30 years. The work was of perennial but the first party denied the regularisation. Some of the workmen are of the age of superannuation. The first party also denied them the benefits of bonus and regularisation against the spirit of Contract Labour Abolition and Regularisation Act. There are catena of decisions of apex and Gujarat High Court that the workmen who have been working for a long period ought to be regularised if the work was of perennial nature. The union has referred the cases of Indian Petro Chemical Corporation Ltd. V/s Shramik Sena, 1999 (6) SC C 439 and ONGC V/s Engineering Mazdoor Sangh, 2005 (2) GLH 703 Gujarat High Court. Thus the union has prayed for regularisation of all 99 workers as permanent employee with the cost of Rs.10000/- as cost of reference.
3. The first party The General Manager, Hindustan Salts Ltd., Kharagoda, Surendranagar, hereinafter referred to as ‘first party’ submitted the written statement Ex. 6 submitting that the union is not registered under the Trade Union Act, therefore, has no right to raise the dispute. The second party union has not produced the list of members, office bearers, date of election of office bearers etc. Therefore, the union has no right to raise the dispute. The first party has been paying the minimum wages to all the workmen as per the Minimum Wages Act. These workers cannot be regularised as the first party is a central government instrumentality which have its own rules and procedure of recruitment. The regularisation of these workmen will amount to back door entry. Therefore, the reference has no force and liable to be dismissed.
4. On the basis of the pleadings, the following issues arise:
 - i. Whether the demand of the union for regularisation of services of Shri Chandu Karman and 98 others in the establishment of Hindustan Salts Ltd., Kharagoda, Surendranagar is justified?
 - ii. To what relief, if any, the workmen are entitled?
5. **Issue Nos. i and ii:** As all the issues are interrelated, therefore, are decided together. The burden of proof of these issues lies on the second party union who submitted the affidavit Ex. 7 of one of the workmen named Lalji on behalf of all 99 workmen reiterating the averments made in the statement of claim. On 20.04.2017, none appeared for the first party to cross-examine the witness of the second party and also did not appear thereafter to lead the evidence on behalf of the first party. Therefore, the case was proceeded ex-parte against the first party.
6. I considered the averments made in the statement of claim, written statement and evidence of one of the workman Lalji in his affidavit Ex. 7. Thus in the light of the judgements of Indian Petro Chemical Corporation Ltd. V/s

Shramik Sena, 1999 (6) SC C 439 and ONGC V/s Engineering Mazdoor Sangh, 2005 (2) GLH 703 Gujarat High Court, considering the perennial nature of work and long service of all 99 workmen, the Issue Nos. i and ii are decided with a observation that the demand of the union for regularisation of all 99 workmen is just and legal.

7. The first party is directed to regularise the services of all the aforesaid 99 workmen involving this reference after taking the approval from the Board of Directors of the first party within 60 days from the publication of the award.

8. The award is passed accordingly.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 3 जून, 2019

का.आ.995.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार निदेशक, सरदार वल्लभभाई राष्ट्रीय प्रौद्योगिकी संस्थान, इचानाथ, सूरत (गुजरात) और अन्य एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, अहमदाबाद के पंचाट (संदर्भ संख्या 70/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 22.05.2019 को प्राप्त हुए थे।

[सं. एल-42011/08/2013-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 3rd June, 2019

S.O. 995.— In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 70/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad, as shown in the Annexure, in the Industrial Dispute between the employers in relation to The Director, Sardar Vallabhbhai National Institute of Technology, Ichchanath, Surat (Gujarat) and Others, and their workmen which were received by the Central Government on 22.05.2019.

[No. L-42011/08/2013-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present : Pramod Kumar Chaturvedi, Presiding Officer,
CGIT-cum-Labour Court, Ahmedabad,
Dated 29th April, 2019

Reference: (CGITA) No. 70/2013

The Director,
M/s. Sardar Vallabhbhai National Institute of Technology,
Ichchanath, Surat (Gujarat)

... First Party

V/s

1. The Secretary,
Surat Jilla Bharatiya Mazdoor Sangh,
B/206, Capital Complex, Beside Pratik Row House,
Hany Park Road, Adajan, Surat (Gujarat)

2. The Secretary,
Gujarat Audhyogik Kamdar Mahamandal,
492/2950, Gujarat Housing Board, Bapunagar Cross Road,
Ahmedabad (Gujarat)

...Second Parties

- For the First Party : Shri Jayesh M. Patel
For the Second Party No. 1 : None
For the Second Party No. 2 : Shri Hitesh D. Katharotiya

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-42011/8/2013-IR(DU) dated 01.04.2013 referred the dispute for adjudication to the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the establishment of Sardar Vallabhbhai National Institute of Technology, Surat falls under the definition of ‘Industry’ as per the provisions of Industrial Disputes Act, 1947? If yes, whether the demand of the Surat Jilla Bharatiya Mazdoor Sangh, Surat for regularisation of the workmen Shri Kalu Bhanu & 107 others in the establishment of Sardar Vallabhbhai National Institute of Technology, Surat is legal and justified? What relief the workmen are entitled to?”

1. The reference dates back to 01.04.2013 and received on 15.04.2013 from Ministry of Labour and Employment, New Delhi for adjudication and passing the award.
2. After issuing notice to the parties, the second party submitted the statement of claim Ex. 8 on 11.09.2017 and the first party submitted the written statement Ex. 9 on 15.11.2017. On 16.01.2017, the second party moved an application Ex. 7 for impleading Gujarat Audhyodik Kamdar Mahamandal as second party union in place of ‘Surat Jilla Bharatiya Mazdoor Sangh’.
3. The second party union in his statement of claim has alleged that the workman detailed in the application Ex. 8 have rendered ranging from 2 years to 48 years and despite serving for such a long period have been denied the benefits of making them permanent workmen of the first party also denying the benefit of equal pay for equal work. He has further alleged that still they have been serving as casual labour. Thus the first party has been indulging in unfair labour practice under Item No. 10 of the 5th Schedule of Industrial Disputes Act, 1947. It is further alleged that the workmen detailed in the annexure A have been receiving daily wages of Rs.193/- to Rs.300/- per day whereas the permanent workmen have been getting a salary of Rs.30000/- per month despite discharging same nature of duties as the permanent workmen have been performing. The Supreme Court in Secretary State of Karnataka V/s Uma Devi, 2006 (4) SCC 1 and Umrula Gram Panchayat V/s Secretary, Municipal Employees Union has held that as under:

“13. Further, Section 25 (T) of the Industrial Disputes Act clearly states that unfair labour practice should not be encouraged and the same should be discontinued. In the present case, the principle ‘equal work, equal pay’ has been violated by the appellant Panchayat as they have been treating the concerned workmen unfairly and therefore, the demand raised by the respondent Union needs to be accepted. The High Court has thus, rightly not interfered with the award of the Labour Court as the same is legal and supported with cogent and valid reasons.”

“16. The reliance placed by the learned senior counsel for the appellant upon the decision of this Court in Secretary, State of Karnataka and others V/s Uma Devi and others, 2006 (4) SCC 1, does not apply to the fact situation of the present case and the same cannot be accepted by us in the light of the cogent reasons arrived at by the courts below.”

Thus on the basis of the aforesaid judgements, the second party union has alleged that the first party has indulged in unfair labour practice under Section 2 (r a) of the 5th Schedule of Industrial Disputes Act.

4. It is further alleged that these workmen have been working as helper, clerk, computer operator, lab assistant, network security, office assistant, fitter, cashier, gym instructor, plumber, carpenter, electrician, mistries, wiremen, drivers, cooks, sweepers, cleaners and mazdoors. It is noteworthy that large number of such posts are vacant and these workmen having eligible qualifications have been denied the benefit of granting permanent status of employment as employees of the first party. They have been working more than 240 days in all the calendar years and therefore, are entitled for regularisation. Thus the second party union has prayed for declaring the first party indulged unfair labour practice under Section 2 (r a) of the Industrial Disputes Act and issue directions to the first party to stop indulging in unfair labour practice and order the first party to give all the workmen the benefits of a permanent employee.

5. The first party in his written statement Ex. 9 has submitted that the averments made in the statement of claim are false, fabricated, vexatious, unjust, improper, against the settled law and the reference is barred by non-joinder and mis-joinder of the parties and has been suffering with delay and latches. The first party M/s. Sardar Vallabhbhai National Institute of Technology, Surat is national education institution created under the National Institute of Technology Act, 2007 and the reference under the Industrial Disputes Act being the Act not applicable in the case. It does not fall under the definition of Industry under Section 2 (j) of the Industrial Disputes Act. Therefore, the reference is not maintainable and liable to be dismissed.

6. The second party vide rejoinder Ex. 11 submitted that the Institute is an Industry and has not followed the provisions of Industrial Disputes Act in granting permanent status to the workmen despite serving for number of years.

7. On the basis of the pleadings, the following issues arise:

- i. Whether the establishment of Sardar Vallabhbhai National Institute of Technology, Surat falls under the definition of 'Industry' as per the provisions of Industrial Disputes Act, 1947?
- ii. Whether the demand of the Surat Jilla Bharatiya Mazdoor Sangh, Surat for regularisation of the workmen Shri Kalu Bhanu & 107 others in the establishment of Sardar Vallabhbhai National Institute of Technology, Surat is legal and justified?
- iii. To what relief, if any, the workmen are entitled?

8. **Issue Nos. i, ii and iii:** As all the issues are interrelated, therefore, are decided together. The burden of proof of these issues lies on the second party union who submitted the affidavits Ex. 12 of workmen Kalubhai Bhanabhai, Ex. 13 of Lalubhai Amratbhai Rathod, Ex. 14 of Shivrambhai Mangubhai Patel, Ex. 15 of Nareshbhai Chimbabhai Rathod, Ex. 16 of Dhirubhai Ghhanabhai Rathod, Ex. 17 of Rajubhai/Dharmesh Budhiyabhai Rathod, Ex. 18 of Chimbabhai Budhiyabhai Rathod, Ex. 19 of Kalubhai Bhanabhai Rathod and Ex. 20 of Bhavinbhai Chotubhai Rathod reiterating the averments made in the statement of claim.

9. The first party has not lead any evidence, therefore, the statement of the workmen is believable.

10. It is noteworthy that all the affidavits of the aforesaid workmen bears the signature of workmen as well as the Director, M/s. Sardar Vallabhbhai National Institute of Technology, Surat but despite the same, the first party has not contested the case by leading evidence.

11. The second party union Gujarat Audhyogik Kamdar Mahamandal submitted an application Ex. 21 stating that they have contested the case only on behalf of 20 workmen listed below:

Serial No.	Name of Workman
1	Kalubhai Bhanabhai Rathod
2	Lalubhai Amratbhai Rathod
3	Shivrambhai Mangubhai Patel
4	Nareshbhai Chimbabhai Rathod
5	Dhirubhai Ghhanabhai Rathod
6	Rajubhai/Dharmesh Budhiyabhai Rathod
7	Chimbabhai Budhiyabhai Rathod
8	Bhavinbhai Chotubhai Rathod
9	Vishakha Rant
10	Laxmikant Rant
11	Ravi K. Solanki
12	Ramesh M. Gamit
13	Manish R. Gamit
14	Yogesh Gamit

15	Vinod G. Gamit
16	Nitesh V. Gamit
17	Pragnesh V. Gamit
18	Suresh H. Gamit
19	Arvind A. Rana
20	Dinesh V. Gamit

12. Thus the reference is fit to be allowed and this Tribunal disposed of the reference with the observation as under: “the establishment of Sardar Vallabhbhai National Institute of Technology, Surat falls under the definition of ‘Industry’ as per the provisions of Industrial Disputes Act, 1947 and the demand of the Surat Jilla Bharatiya Mazdoor Sangh, Surat for regularisation of the workmen Shri Kalu Bhanu & 107 others in the establishment of Sardar Vallabhbhai National Institute of Technology, Surat is legal and justified.”

13. The first party The Director, M/s. Sardar Vallabhbhai National Institute of Technology, Ichchanath, Surat is directed to give the benefit to the aforesaid 20 workmen equivalent to the benefits of permanent employees of the Institute within 60 days from the publication of the award.

14. The award is passed accordingly.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 3 जून, 2019

का.आ.996.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स कार्यकारी अभियंता (सी), बीएसएनएल सिविल डिवीजन, मंडी (एचपी) और अन्य एवं उनके कर्मचारी के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चंडीगढ़ के पंचाट (संदर्भ संख्या 87/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 23.05.2019 को प्राप्त हुए थे।

[सं. एल-40012/52/2010-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 3rd June, 2019

S.O. 996.— In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 87/2010) of the Central Government Industrial Tribunal-cum-Labour Court Chandigarh, as shown in the Annexure, in the Industrial Dispute between the employers in relation to The Executive Engineer (C), BSNL Civil Division, Mandi (HP) and Others, and their workmen which were received by the Central Government on 23.05.2019.

[No. L-40012/52/2010-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE**IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH****Present:** Sh. A.K. Singh, Presiding Officer**ID No. 87/2010**

Registered on: 15.11.2010

Sh. Nek Ram S/o Sh. Jagat Ram, R/o Village Dhandhal-III,
Tungal, Sub-Tehsil Kotli, Distt. Mandi (HP)

... Workman

VersusBSNL through its Executive Engineer (C) Civil Division,
Sunder Nagar, Distt. Mandi (HP) etc.

... Management

AWARD**Passed on: 06.05.2019**

Central Government vide Notification No. L-40012/52/2010-IR(DU) Dated 27.10.2010, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

“Whether the workman Shri Nek Ram S/o Shri Jagat Ram was employed as Ferro Printer-cum-Peon in the Office of Architect, BSNL, Mandi and sunder Nagar w.e.f. 1996 to 31.03.2005 through a sham and bogus contractor? If so, whether the workman is entitled to regular employment and if so from what date and with what benefits?”

1. Both the parties were served with notices. The workman/claimant filed his statement of claim with the averment that he was appointed as Ferro Printer-cum-Peon on daily wages in the office of management at Ram Nagar, Mandi Town, Distt. Mandi, in the year 1996 and continued to work till 2001. He was transferred in the office of Architect BSNL, Sunder Nagar and he worked there upto 31.05.2005 when his services were terminated orally without giving him any retrenchment compensation, notice or holding any enquiry in violation of Section 25 of the Industrial Disputes Act, 1947. Workman continued his services without any break except on Sundays/holidays, rest days and have been completed 240 days in every calendar year till the date of his termination on 31.05.2005. Besides this, management has appointed fresh persons amounting to unfair labour practice and in violation of Section 25-H of the ID Act, 1947. It is pertinent to mention that respondents have also retained juniors to the applicant violating Section 25-G of the ID Act, 1947. The workman is still unemployed and made numerous requests to the management but no heed was given to his request. In view of the above facts, it is prayed that the management be directed to reinstate the workman into service from 31.05.2005 along with all consequential benefits, back wages and continuity of service.

2. Management-BSNL has filed its written statement stating therein that workman was never appointed as Ferro Printer-cum-Peon in the office of BSNL. The alleged work was carried out through contractors of approved list duly enlisted with appropriate department having contract agreement with the Sub-Divisional Engineer(Civil), BSNL, Civil Sub-Division, Mandi and Sunder Nagar. The workman was not transferred from Mandi to Sunder Nagar as he was never appointed by the department of BSNL. Denying the averments of para 2 of the claim statement it is stated that as per contract agreement with the contractors, the record of labours have been retained by the contractors and not by the management, who is only responsible to regulate the grievances of labourers during the progress of the work. There is no violation of Section 25-F, 25-G or 25-H as alleged in the claim statement by the workman. As the workman was not the employee of the management therefore, point of ousting him from service by the management does not arise. It is submitted that the workman is not an employee of the respondent-management hence, not entitled to any reinstatement in the management. It is prayed that the reinstatement of the workman in the management is not at all justified and prayer of the workman is liable to be rejected.

3. In support of his case, workman Nek Ram has examined himself and filed his affidavit Ex.W/A, reiterating his case as set out in the claim petition. The workman has proved Ex.W1 the copy of payment voucher-cum-bill dated 03.12.1997 supplied by the management. Workman Nek Ram has also proved Ex.W2 which is Peon Book from 01.07.1996 to 15.10.2001 regarding the working of witness as delivery of mail. During the cross-examination, this witness has stated that no advertisement or letter of appointment was published and issued at the time of his posting in the department. He has stated that his attendance was marked by the Architect department of Telecommunication, Kadam Cottage, Ram Nagar, Mandi for the period from 1996 to 2001. He has also stated that he does not have the copy of the transfer order as the same is in the office of the management of BSNL. Workman Nek Ram has specifically denied

that he was working under the supervision of any contractor mentioned in Annexure R1 filed by the management. Thus, it is crystal clear from the statement of the workman that he was appointed initially as daily wager and in this connection, neither any advertisement has been made by the management nor any appointment letter has been issued in favour of the workman.

4. Respondent-management has submitted affidavit of witness Sham Bharat Brice, Chief architect, BSNL, Shimla, who has been cross-examined by the learned counsel of the workman. This witness has proved copies of agreements and supply order of the skilled, semi-skilled labours as Annexure MW2, copies of the vouchers of payment made to various contractors by supply of labours from the year 1996 to June 2004 as Annexure MW3. Copies of the payment vouchers and contractors Annexure MW4. He has stated that workman was never appointed by the management as stated by the workman as such, management has not violated the provision of ID Act, 1947. This witness has also accepted the documents Ex.W1 relating to the payment of wages for 17 days issued by the management with the assertion that it was inadvertently paid to the workman directly. During the cross-examination by the workman counsel, this witness has stated that management took services of contractors from January 1996 to June 2004 and tender was accordingly floated for hiring the services of the contractors by the competent authority. He has accepted that he does not know about the registration of the management under the CLR Act. He has also accepted that management has no any attendance record in respect of workman. The witness Sham Bharat Brice has also accepted that management has paid directly to the workman his salary for the month of November 1997 for 17 days. This witness has made statement that he does not know whether Ex.MW2 was issued by the department to the workman. Thus, regarding the Peon-book the answer of this witness is very evasive and he has not specifically denied the genuineness of the Peon-book.

5. Learned counsel of the workman has contended that he has joined the management-BSNL in the year 1996 as Ferro Printer-cum-Peon on daily wages and continued to work till his termination on 31.05.2005 by the management. It is also contended that the claimant/workman terminated/retrenched on 31.05.2005 without any notice and justification which is not sustainable in the eye of law. Learned counsel has also argued that workman had worked for more than 240 days in each calendar year with the management and the management assertion that he worked under the contractor is to avoid the liability of the management under the Industrial Disputes act, 1947. The management has adopted the policy of hire and fire and the alleged contracts with the contractors are shame, camouflage just to avoid the responsibility arising under the Industrial Disputes Act, 1947. Learned counsel further contended that the alleged contractors were not duly licenced contractors as such, respondent-management had taken their service(if any)against the provisions of Contract Labour(Regulation and Abolition)Act, 1970.

6. Per contra, learned counsel of the management argued that claimant is neither workman nor appointed by the management of BSNL for the work as alleged in the claim petition. Learned counsel also argued that there was no relationship of employer and employee between the workman and management as such, respondent-management has no liability towards the workman. It is also contended that being the employee of contractors, if any liability occurs, it is between the workman/claimant and contractors under whom he served during the alleged employment period.

7. The first contention regarding the claimant is that whether he comes within the definition of workman as is defined in Section 2(S) of the Industrial Disputes Act, 1947. I may mention that claimant was appointed as majdoor/peon as per his claim petition and affidavit submitted before the Tribunal. In plain words the claimant was performing his duties as labourer/unskilled worker. He was not in supervisory or administrative post requiring him to perform only administrative duties. While interpreting Section 2(S) Hon'ble Supreme Court in the case of Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Court 2532, has observed as follows:-

“The source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman.”

Thus Hon'ble Supreme Court has clarified that the definition of workmen also does not make any distinction between full time or part time employee or a person appointed on contract basis. There is nothing in plain language of Section 2(S) from which it can be infer that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman. In view of the ratio of law enunciated in the above ruling, in my considered opinion the claimant herein admittedly falls within the definition of 'workman' under Section 2(S) of the Act.

8. The Hon'ble Supreme Court after analysing the catena of cases has laid down in **Balwant Raj Saluja Vs. Air India Limited in Civil Appeal No.10266 dated 25.08.2014**, two well recognised tests to find out whether the workman or labours are the contract employees of the principal employer are:-

- 1) Whether the principal employer pays the salary instead of contractor and
- 2) Whether the principal employer controls and supervise the work of the employees?

The facts regarding the payment of salary by the management or contractor has not been specifically stated in the claim petition of the workman. In fact, claim petition is totally silent regarding the payment of wages, salary, letter of appointment or anything likewise. Similarly, workman namely Nek Ram has not mentioned anything regarding the mode of payment of wages, salaries etc. in his affidavit. Thus, this basic feature for holding the relationship of employer and employee is totally lacking not in the pleading but also in the evidence submitted by the workman. In this connection, learned counsel for the workman has contended that payment of salary was subject to the control and supervision of the management and virtually it was paid by the management as is alleged by the witness Nek Ram during the course of cross-examination by the counsel of management. I am not satisfied with the arguments of the learned counsel of the workman as nothing is mentioned in pleading/claim petition as well as affidavit submitted by the witness in support of the agreement. It is also pertinent to mention that nothing is on record in the form of documentary evidence that the workman was directly paid by the management. It is surprising that claimant as witness has not stated in his affidavit about the amount of salary or wages payable to him either by the management or by the contractor. Thus, on this issue, safely, it can be inferred that nothing is brought on record that the workman was directly paid by the management except Ex.W1 copy of the payment voucher-cum-bill dated 03.12.1997 which has been also admitted by the management in its written statement and its witness Shyam Bharat Brice in his cross-examination.

9. Secondly, so far as, the question of controls and supervision is concerned. Claimant has stated that his attendance were marked by the Architect Department of Telecommunication Kadam Cottage Ram Nagar Mandi for 1996 to 2001. Nothing is stated in affidavit A1 his witness regarding the supervision and control of management. Except this, nothing is brought on record to prove that it is management who was supervising and controlling the work of claimant. The question remains to be seen whether mere marking of attendance by management amount effective control. The apex court in the case of **International Airport Authority of India vs. International Air Cargo Workers Union [209 (13) SCC374]** has held as follows:-

“If the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by contractor, if the right to regulate employment is with the contractor, and the ultimate supervision and control lies with the contractor.

The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides whether the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor.”

10. Thus, the principal enunciated by the Hon'ble Supreme Court clearly establishes that mere supervision of work is not sufficient to prove the relationship of employer and employee till it is proved that there was a complete control and supervision. The management control includes the authority of dismissal, taking of disciplinary action and continuity of service etc. Claim petition filed by the claimant is mum on this score and the claimant has not mentioned any specific averments in their affidavits regarding the appointment, authority of dismissal or taking of disciplinary action by the management. There is nothing on record to prove that it is the management who grants his leave or has authority to take any disciplinary action. In my considered opinion, mere saying of supervision by Mr. Sunil Kumar Verma regarding the work as alleged by the claimant witness may not be called as effective and absolute control. Such control is being emphasised to control the work of the management for a specific work inefficient manner done by the management in the establishment.

11. Settled legal proposition is that cases has the decided on principle of preponderance of probability and not of proof of beyond doubt. In this connection learned counsel of the workman placing reliance in the case of **Umrula Gram Panchayat vs. The Secretary, Municipal Employees' Union & Ors.**, has contended that the alleged contractor have no valid licence to supply the labours to the management and management has got no licence to that effect also. The management has admitted that the workman was employed through contractors at different times but nothing is proved that the contractors mentioned in Annexure R-1 were duly licenced contractors to supply the workman as well as other labours to the respondent-management. No doubt, management witness Shyam Bharat Brice has proved supply orders of various contractors from the month of January 1996 to August 2002. MW2 voucher of payment made to various

contractors for supply of orders from January 1996 to 2004 as Annexure M-3 along with supply orders to various contractors for supply of labour Annexure R-2 and R-3 but during the course of arguments, learned counsel of the management could not clarify about the placement, tenure, years of workman with the particular contractor as there is nothing mentioned in above documents regarding the names of skilled or unskilled labour supplied by the contractors to the management of BSNL and their payments etc. In fact, these documents relates to January 1996 to August 2002 for supply orders to various contractors of labour and their payments but nothing could be inferred from these documents about the dispute of workman with the management. Contrary to this Annexure R-1 filed by the respondent-management reveals that name of the claimant Nek Ram has found placed at serial no.23 against the contractor name for the month of November 1997 regarding which payment has been made through Ex.W-2 to the workman directly by management. The name of workman Nek Ram at serial no.23 fortifies the arguments of the learned counsel of the workman that alleged contractors and their names are shame and camaflogue just to avoid the responsibility arising out under the Industrial Disputes Act, 1947. Thus, the pleadings and evidences adduced by the respondent-management is very vague as well as not supported by the cogent documents relating to agreement between the respondent-management and contractors. In fact not a single agreement between the respondent-management and contractors has been put on record for perusal of the Tribunal.

12. Learned counsel of the workman Sh. Arun Batra has drawn my attention towards the application dated 17.04.2014 moved by the workman for direction to the management regarding the submission of attendance register, salary record, list of contractors along with their complete address and under which the workman alleged to have been worked, contractors agreement, licence obtained by the management to engage the contract labour. But no specific documents regarding attendance record, salary record, contractors address along with their agreement, licence of the management as well as different contractors have been submitted before the Tribunal for proper adjudication about the facts alleged in defence by the management in its written statement. Thus, adverse inference is logical conclusion against the management for non-submission of the relevant documents. Contrary to this, workman has filed and proved peon book Ex.W2 running from the year 1996 to 2001 which reveals that he served with the management as Peon for such a long time. The entry made in the peon book and signature of workman, payment and bill for the month of No. 1997 Ex.W-1 and mentioning the name of the workman in contractors list are substantive proof to conclude that workman was employed with the respondent-management from the year 1996 till his termination i.e. 31.03.2005.

13. There is no merit in the stand taken by the management that no regular procedure was followed at the time of engagement of the workman nor application was invited for the post of Fero Printer-cum-Peon. To my mind, the workman herein is not seeking regularisation or permanent absorption with the management-bank simply because due procedure was not followed at the time of engagement of the workman herein that would not give licence to the management to terminate the service of the workman in arbitrary and illegal manner. There are several judgments of the Hon'ble Apex Court that service of a daily wager or casual workman cannot be terminated without following the due procedure contained in Section 25-F of the Act. Admittedly, in the present case, no show cause notice was served upon the workman before ordering his termination nor one month salary in lieu of notice was given in advance to the workman at the time of his termination. All these facts are duly admitted by the management in the written statement. It has been held in several decisions by the Hon'ble Apex Court as well as various High Courts that termination of service of a workman, who has served for more than 240 days in a calendar year preceding his termination, will become arbitrary and illegal unless one month notice or one month salary in lieu of such notice is given to such workman at the time of his termination. In this regard, reference can be made to the case of Ajay Pal Singh Vs. Haryana Warehouse Corporation 2056 Supreme Court cases and ONGC 2483 Supreme Court Mechanised Company Vs. Mechanised Union 2004 Supreme Court cases 544. Since in the present case, the management has throw all the norms of natural justice as well as provisions of ID Act to the winds. As such, the action of the management is held to be totally arbitrary and illegal under the law.

14. Now the last question which is incidental to the main issue is whether claimant is entitled to be reinstated with full back wages. Admittedly, claimant was not holding the regular post against a regular vacancy. There are number of factors which are to be considered while considering the question of reinstatement with back wages. Since claimant was a casual worker appointed as a daily wager as such it would be difficult to given the relief of reinstatement to the claimant. It has been held in the case of Hari Nandan Prasad vs. Food Corporation of India (2014) 7 Supreme Court cases 190 as under:-

“Relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice. An order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly daily

wages has not been found to be proper by the Supreme Court and instead compensation has been awarded. The Supreme Court has distinguished between a daily wager who does not hold a post and a permanent employee. The reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal, because of non-payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation.”

15. In the recent decision reported as **2018 LLR 225 titled as District Development Officer & another vs. Satish Katilal Amrelia**, Hon’ble Apex Court while aptly applying the law laid down in earlier case of Bharat Sanchar Nigam Limited Vs. Bhurumal (2014) 7 SCC 177, had awarded lumpsum compensation of Rs.2.5 lakhs to the workman and in Bharat Sanchar Nigam Limited (supra), it was observed as under:-

“33. It is clear from the reading of the aforesaid judgements that the ordinary principle of grant of reinstatement with full back wages when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and/or mala fide and/or by way of victimisation, unfair labour wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious.

34. The reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatory required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since such a workman was working on daily wage basis and even after he is reinstated, he has no right to seek regularisation (see State of Karnataka Vs. Umadevi (3) 17). Thus, when he cannot claim for regularisation and he has no right to continue even as a daily wage worker, no useful purpose is going to be served in reinstating such a workman and he can be given monetary compensation by the Court itself inasmuch as if he is terminated again after reinstatement, he would receive monetary compensation only in the form of retrenchment compensation and notice pay, in such a situation, giving the relief of reinstatement that too after a long gap, would not serve any purpose.

35. We would, however, like to add a caveat here. There may be cases where termination of a daily wage worker is found to be illegal on the ground that it was resorted to as unfair labour practice or in violation of principle of last come first go, vis. While retrenching such a worker daily wage juniors to him were retained. There may also be a situation that persons junior to him were regularised under some policy but the workman concerned terminated, in such circumstances, the terminated worker should not be denied reinstatement unless there are some other weighty reasons for adopting the course of grant of compensation instead of reinstatement in such cases, reinstatement should be the rule and only in exceptional cases for the reasons stated to be in writing, such relief can be denied.”

16. Having regard to the recent judicial trends and duration of service rendered by the claimant. An amount of Rs.3.50 lakh appears to be just and reasonable.

17. As a sequel to my aforesaid discussion, it is held that the action of the management in terminating the services of claimant Shri Nek Ram is illegal and unjustified under the law. The claimant is held entitled for compensation of Rs.3.50 lakh payable by the management with 6% interest from the date of the publication of the Award. This award is accordingly passed.

18. The reference is answered accordingly. Let copy of the award be sent to the Central Government for publication as required under Section 17 of the Act.

A. K. SINGH, Presiding Officer

नई दिल्ली, 3 जून, 2019

का.आ.997.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स प्रबंधन कमांडर वर्क्स इंजीनियर, एम.ई.एस. नॉर्थ कैंट, धर्मशाला (हि.प्र.) और अन्य एवं उनके कर्मचारी के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चंडीगढ़ के पंचाट (संदर्भ संख्या 97/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 23.05.2019 को प्राप्त हुए थे।

[सं. एल-13012/06/2005-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 3rd June, 2019

S.O. 997.— In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 97/2005) of the Central Government Industrial Tribunal-cum-Labour Court Chandigarh, as shown in the Annexure, in the Industrial Dispute between the employers in relation to The Management Commander Works Engineer, M.E.S. Northern Cantt, Dharamshala (H.P.), and their workmen which were received by the Central Government on 23.05.2019.

[No. L-13012/06/2005-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE**IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH****Present:** Sh. A.K. Singh, Presiding Officer**ID No. 97/2005****Registered on:-**

Sh. Anil Kumar, S/o Sh. Karam Chand, R/o Village Bathan,
P.O. Thural, Tehsil Palampur, Distt. Kangra (H.P.)

... Workman

Versus

The Management of Commander Works Engineer, M.E.S. Northern Command,
Yol. Cantt, Dharamshala(H.P.), through S.E.

...Management

AWARD**Passed on: 10.04.2019**

Central Government vide Notification No. L-13012/6/2004-IR(DU) Dated 28.04.2005, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

“Whether the action of the management of Commander Works Engineer, MES, Yol Cantt., Dharamshala (HP) in terminating the services of Sh. Anil Kumar without complying with the provisions of the ID Act, 1947, is just and legal? If not, to what relief the workman is entitled to and from which date?”

1. Both the parties were served with notices. The workman/claimant filed his statement of claim with the averment that the workman was appointed as a Mazdoor by the Management vide letter dated 26.10.1994. Since January 1997 the workman suffered from depression and other ailments and hence he proceeded on leave up to 25.03.2002. The workman presented himself for duties on 26.03.2002 but he was allowed to join only w.e.f. 23.05.2002, pending enquiry, although certificates submitted by him were got verified. The workman was served with a charge-sheet dated 18.01.2003 to which he submitted his explanation. It has been inter-alia alleged that the Enquiry Officer did not hold the enquiry in a fair and proper manner and no opportunity of defence/hearing was afforded to the workman and ultimately the services of the workman were terminated vide order dated 21.10.2003 which was delivered to the workman on 29.10.2003. It is also alleged that along with the charge-sheet, neither any list of witnesses nor list of documents were supplied to him as a

result of which the workman remained handicapped to defend the enquiry properly. Before passing the order of removal from service neither any show cause notice was issued to him nor copy of the enquiry report was supplied to him. The punishment so inflicted upon the workman is highly disproportionate to the alleged misconduct, more so the workman continuously performed his duties from 26.03.2002 to 30.10.2003. It has been pleaded that the workman is not gainfully employed from the date of removal from service and prayer has been made for his reinstatement into service with continuity of service and back wages.

2. Management resisted the claim of the workman by filing written statement wherein preliminary objection has been taken to the effect that the claimant was appointed as a civil servant and appointment letter dated 26.10.1994 issued by the management clearly stipulates that Anil Kumar will be subject to the condition of service as applicable to Temporary Civilian Government and will be governed by CCS(Conduct) Rules, 1964 and hence neither the claimant is a “workman”, nor the management institution is an “industry” and as such the Tribunal has no jurisdiction to entertain the claim petition. It has also been alleged that the enquiry has been conducted under CCS(Conduct) Rules and same can be assailed only before Central Administrative Tribunal and as such reference made by the Ministry of Labour is beyond the jurisdiction. On merits it has been stated that the claimant absented himself from duty w.e.f. 9.01.1997 and he was telegraphically asked to report for duty in May 1997, 15.11.1997 and 03.01.1998 and again vide office letter dated 24.01.1998. Despite repeated reminders he failed to join his duties and then the matter was taken up with SP Kangra vide letter dated 09.01.1998. Number of letter were issued to him through different modes, details of which have been given in para 1 of the written statement (at page-2). Charge-sheet was issued against the claimant and proper enquiry was conducted for the misconduct on the part of the claimant. The claimant participated in the enquiry proceedings and had confessed his fault regarding not informing the office in time and without obtaining station leave w.e.f. 09.01.1997 to 25.03.2002 i.e. for more than five years. Based on the enquiry report, penalty of removal from service was imposed upon the claimant. Prayer has been made for dismissal of the claim petition.

3. I have heard the oral arguments advanced by the parties and perused the file and written arguments carefully.

4. Learned counsel of the workman/claimant has contended that with all legal purposes, this is a case of no evidence as management has not adduced any oral or documentary evidence after the order of this Tribunal regarding the fairness of enquiry. Learned counsel argued that as and when the enquiry held by the employer is found to be unfair and improper, the employer has reserves its right on fairness of the action taken to punish the workman by leading fresh evidence but management has failed to file any fresh evidence. Hence workman is entitled to the relief prayed then and there. It is further submitted that in such case, workman is not under obligation to lead any evidence in support of his claim. Learned counsel of the claimant/workman has contended that there is no allegation on the part of the employer that claimant/workman wilfully or deliberately made himself absent during the alleged period and there is also no such finding that absence was deliberate or wilful in enquiry proceedings. It is also argued that the enquiry officer has also not held that claimant/workman was wilfully absent. It is neither the case of the disciplinary authority nor the enquiry officer that the medical report submitted by the workman is forged or fabricated or obtained for any consideration. Hence, the punishment awarded to the claimant/workman is harsh and disproportionate and liable to be quashed. Learned counsel has contended that this Tribunal got power of judicial review under Section 11(A) of the Industrial Disputes Act 1947 to alter, modify or reject the order passed by the management/employer. Learned counsel of the workman has placed reliance to the judgment of Hon’ble Supreme Court in the case of Neeta Kaplish vs. Presiding Officer, Labour Court Civil Appeal No.6079/98 dated 04.12.1998 and Civil Appeal No.6018/2014 decided on 07.07.2014 and Krushankant B. Parmar vs. Union of India and other Civil Appeal No.2106/12 decided on 15.02.2012, Mathura Prasad vs. Union of India and Ots. C.W.P. No.4634/2006 decided on 01.11.2006.

5. Per contra, learned counsel of the management argued that claimant is neither workman nor this Tribunal has got jurisdiction to decide the reference made by the Central Government. Further advancing the arguments, learned counsel contended that the evidence submitted on record through affidavit and domestic(court) enquiry conducted against the workman is ample proof that he wilfully made himself absent for more than 5 years in such establishment which is not only of national importance but also known for its strict rules and regulations. Learned counsel also argued that the workman/claimant was appointed as civil servant and is governed by the CCS(Conduct) Rules e.g. the enquiry had been conducted under CCS Rules for the misconduct on the part of the claimant/workman. The order passed by the disciplinary authority is within its right and claimant/workman is not entitled to reinstated or any relief sought through the claim petition.

6. The perusal of file reveals that case is pending for almost 14 years and during the pendency of proceedings before the Tribunal workman has submitted his affidavit dated 14.04.2006 whereas management has filed affidavit of Sh. K.S. Chahar, CWE, M.K. Gupta, CWE, along with domestic enquiry on the basis of which workman was punished by the competent authority. But record reveals that it is on 20.08.2018 the then Presiding Officer framed following three issues:-

- 1) Whether the domestic enquiry conducted against the workman is fair and in accordance with the principle of natural justice.

- 2) Whether the punishment awarded to the workman, in case the domestic enquiry is held to be valid, commensurate with the gravity of misconduct.
- 3) Whether the workman is not covered by the definition of workman under Section 2-S of the Act.

7. Undoubtedly, earlier the case was pending at the stage of fairness of enquiry throughout the year. My learned predecessor after giving opportunity and hearing of parties decided issue no.1 and 3 vide its order dated 24.10.2018, holding that workman is covered by the definition of workman under Section 2(S) of the Act as well as this Court has a jurisdiction to decide the case in the light of the judgment of the Hon'ble Supreme Court in *Davinder Singh vs. Municipal Council Sanaur AIR 2011 (SC) 2532*. Similarly, domestic enquiry conducted by the employer is held unfair and not in accordance with the principle of natural justice. The aforesaid order was not challenged by the respondent-management before Hon'ble High Court and thus, the order has attained finality. To my mind, the arguments advanced by the learned counsel of management regarding maintainability of claim petition in the light of the jurisdiction has no force.

8. The Hon'ble Supreme Court in the series of cases has held that management has got right to defend its order by independent evidence before the Tribunal but the management should avail itself of the said opportunity by making the request to the Tribunal before the proceedings are closed. Reference may be made of *Shankar Chakarvarti vs. Britannia Biscuit Company(1979)3 SCC 371* and latest judgment of *M.L. Sinha Vs. Punjab National Bank and Anr. 2019, LLR page 3*. Hon'ble apex court is of the view that if no such opportunity has been availed or asked for by the management before the proceedings are closed, the employer can make no grievance that the Tribunal did not provide such an opportunity. Thus, employer was under obligation after the order dated 24.10.2018 to lead additional evidence in support of punishment awarded to workman but no evidence has been led by the employer to prove the alleged misconduct of the claimant/workman.

9. Thus, the question remains to be seen and decided whether the punishment awarded to the workman in case the domestic enquiry is held to be invalid and unfair commensurate with the gravity of misconduct. As per the arguments of the learned counsel of the workman, question arises whether the evidence on the enquiry file and evidence (affidavit) of the management witness can be read as evidence after the order dated 24.10.2018 passed on preliminary enquiry. The Hon'ble Supreme Court in the case of *Neeta Kaplish vs. Presiding Officer(supra)*, while dealing with this issue and referring the case of *Delhi Company Ltd. Vs. Ludh Budh Singh 1972(1) LLR*, has held that if the employer on domestic enquiry under not simultaneously lead evidence or ask for opportunity during the pendency of proceeding to adduce such evidence the duty of Tribunal is only to consider the validity of the domestic enquiry as well as the finding recorded therein and decided the matter. If the Tribunal decided the domestic enquiry has not been held properly, it is not relevant to invite suo motu the employer to adduce evidence just to decide the action taken by it. Learned counsel of the employer/management has contended that it is open to the management to rely upon the domestic enquiry already held by the enquiry officer was under no obligation to lead further evidence particularly when management was of the view that the charges on the basis of evidence already led before the enquiry officer is stood proved. In this connection, learned counsel of the employer-management had drawn my attention towards provision of Section 11(A) in which terminology materials on record has been used and argued that since the enquiry proceedings constituted materials on record, the same could not be ignored. Hon'ble Supreme Court in the case of *Neeta Kaplish(supra)* while with this issue has observed that arguments of such nature is fallacious. The Hon'ble Supreme Court is of the view that the record pertaining to the domestic enquiry could not constitute fresh evidence as those proceedings have already been found by the Labour Court to be defective. The Hon'ble Supreme Court is of the view that such record could also not constitute material on record as contended by the counsel of the respondent-management within the meaning of Section 11(A) as the enquiry proceedings are to be found bad or have to be ignored. In this connection, it is relevant to mention that Hon'ble Supreme Court while deciding the case has held that if management did not lead any fresh evidence on merits after the finding of domestic enquiry, the workman is also well within his right to say that he could not lead any fresh evidence. According to the Hon'ble Supreme Court claimant/workman is entitled to be granted relief then and there. Thus, going through the judgment of *Neeta Kaplish*, it can be safely observed that this is a case in which management has not adduce any additional evidence after the passing the order on preliminary issue regarding the fairness of enquiry resulting this case of no evidence.

10. Next question remains to be seen whether the punishment awarded to the claimant/workman is disproportionate to the gravity of the misconduct. Considering the scope of judicial review on the quantum of punishment and referring to various cases in *Jai Bhagwan Vs. Commissioner of Police & Ors., 2013(4) S.C.T. 607: (2013) 11 SCC 187*, the Apex Court held as under:-

“What is the appropriate quantum of punishment to be awarded to a delinquent is a matter that primarily rests in the discretion of the disciplinary authority. An authority sitting in appeal over any such order on punishment is by all means entitled to examine the issue regarding the quantum of punishment as much as it is entitled to examine whether the charges have been satisfactorily proved. But when any such order is challenged

before a Service Tribunal or the High Court the exercise of discretion by the competent authority in determining and awarding punishment is generally respected except where the same is found to be so outrageously disproportionate to the gravity of the misconduct that the Court considers it be arbitrary in that it is wholly unreasonable. The superior courts and the Tribunal invoke the doctrine of proportionality which has been gradually accepted as one of the facets of judicial review. A punishment that it so excessive or disproportionate to the offence as to shock the conscience of the Court is seen as unacceptable even when courts are slow and generally reluctant to interfere with the quantum of punishment. The law on the subject is well settled by a series of decisions rendered by this Court....”

11. The vital and important question which arises for consideration is whether this tribunal ought to interfere with the punishment awarded by the disciplinary authority in the light of the observation made by Hon'ble Supreme Court. Learned counsel of the claimant/workman has contended that there is nothing on record to prove that charge was framed that workman wilfully remained absent from 09.01.1997 to 25.03.2002 while disciplinary authority awarding punishment has held that workman had made himself absent wilfully. Learned counsel contended that absence from duty without any application or prior permission may amount to unauthorised absent but it does not mean always wilful. The Hon'ble Supreme Court in the case of Krushnakant B. Parmar(supra), dealing with this issue has held that if unauthorised absence from duty is made, the disciplinary authority is required to prove that the absence is wilful. In the absence of such finding the absence is not amounts to misconduct because absence may be the result of compelling circumstances under which it was not possible to report or perform duty such absence cannot be held wilful. There may be different eventuality due to which an employee may absent from duty including compelling circumstances beyond his control like evidence, accident, hospitalisation etc. but in such cases, the employee cannot be held guilty of absent from duty or failure of wilful misconduct. In the present case, the disciplinary authority has failed to prove that the absence from duty was wilful and no such finding has been given by the enquiry officer or the appellate authority. Though, the workman has taken specific defence that he was preventing from attending duty due to mental problem and has submitted medical certificates regarding his absence which has got duly verified by the authority concerned. In fact there is nothing on record to prove that the medical certificates submitted by the workman were obtained by fraud or were forged or such in nature which cannot be relied on by the disciplinary authority.

12. Coming to the case at hand, I am of the view that punishment of termination from the service for the misconduct of absence for more than 5 years due to his mental illness is disproportionate to the charge. Ordinarily, fairness of enquiry being against the principle of natural justice, reinstatement of workman is automatic choice for Tribunal. But, I am deliberately avoiding the ordinary course because more than two decades have passed since his termination and over these years workman must have gainfully employed elsewhere. Perhaps, that is why he has not mentioned anything in his affidavit filed as evidence. There is nothing on record to prove the date of birth of workman but if it is presumed that he was employed by the management at the age of 19-20 years then he will be at the age of 44-45 years at present which is generally the age of superannuation in Military establishment of lower rank employees. In such circumstances, there cannot be any order of reinstatement and awards of lump sum compensation will meet the ends of justice. Considering the length of service of workman/claimant in the establishment and his deprivation of the job over the years elsewhere in my considered view lump sum amount of Rs.2,50,000/- could meet the end of justice in lieu of reinstatement, back wages, gratuity and any other amount payable to workman.

13. In result, the order of termination by the respondent-management is set aside and claim is allowed. The respondent-management is directed to pay Rs.2,50,000/- to workman as compensation within two months from the notification of the award failing which the said amount is payable at the rate of 8% per annum thereon.

14. The reference is answered accordingly. Let copy of the award be sent to the Central Government for publication as required under Section 17 of the Act.

A. K. SINGH, Presiding Officer

नई दिल्ली, 3 जून, 2019

का.आ.998.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स भारत इलेक्ट्रॉनिक्स लिमिटेड पंचकुला और अन्य एवं उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चंडीगढ़ के पंचाट (संदर्भ संख्या 54/2017) को प्रकाशित करती है जो केन्द्रीय सरकार को 20.05.2019 को प्राप्त हुए थे।

[सं. एल-14011/14/2017-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 3rd June, 2019

S.O.998.— In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 54/2017) of the Central Government Industrial Tribunal-cum-Labour Court Chandigarh, as shown in the Annexure, in the Industrial Dispute between the employers in relation to The Bharat Electronics Ltd. Panchkula, and Others, and their workmen which were received by the Central Government on 20.05.2019.

[No. L-14011/14/2017-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

**BEFORE PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I,
CHANDIGARH**

Case No. ID. 54/2017

Registered on:-20/03/2018

Workmen / Union (through General Secretary Bharat Electronics Workers Union)

...Workman

Vs.

Bharat Electronics Ltd. Panchkula

...Management

AWARD

1. In the present case, a reference was received from the appropriate Government Letter No. L-14011/14/2017- IR(DU) dated 26/02/2018 under clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 (hereinafter called the Act), for adjudication of a dispute, terms of which are as under:

“Whether action of the Bharat Electronics Limited, Panchkula in reducing the release hours for the union activities from the month of June, 2016 just, fair and legal? If not, to what relief is the Union entitled to” ?

2. An application was moved by the workmen through General Secretary, wherein he has stated that an amicable solution has been found to settle the matter with the Management and the union does not want to pursue the matter further more against the management.

3. Since workmen/union himself is not interested in adjudication of the Reference on merits as such, this Tribunal is left with no option to dispose of the reference without recording any evidence. Accordingly, no dispute/no claim award is hereby passed in view of the final settlement already arrived between the parties. It is held that now workmen/union is not entitled any relief. Let copy of this award be sent to the Central Government for publication as required under Section 17(2) of the Act.

Dated: 06.05.2019

A. K. SINGH, Presiding Officer-cum-Link Officer

नई दिल्ली, 3 जून, 2019

का.आ.999.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स निदेशक, अखिल भारतीय आयुर्विज्ञान संस्थान (एम्स) ऋषिकेश देहरादून और अन्य एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली के पंचाट (संदर्भ संख्या 133/2018) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.05.2019 को प्राप्त हुए थे।

[सं. एल-42012/48/2017-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 3rd June, 2019

S.O.999.— In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 133/2018) of the Central Government Industrial Tribunal-cum-Labour Court, 2 New Delhi, as shown in the Annexure, in the Industrial Dispute between the employers in relation to The Director, All India Institute of Medical Sciences (AIIMS) Rishkesh Dehradun and Others, and their workmen which were received by the Central Government on 09.05.2019.

[No. L-42012/48/2017-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 133/2018

Date of Passing Award- 10th April, 2019

Between:

Shri Balbir Singh,
S/o Late Sh. Avtar Singh,
R/o Nirmal Part-B, Gali-9,
Pashulok, Rishikesh
Dehradun-249203.

... Workman

Versus

The Director,
All India Institute of Medical Sciences (AIIMS)
Rishkesh
Dehradun-249203.

... Management

Appearances:-

Claimant in person, (Advocate)

For the Workman

None for the management, (Advocate)

For the Management

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of All India Institute of Medical Sciences (AIIMS), and its workman/claimant herein,

under clause (d) of sub section (1) and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L- 42012/48/2017 (IR(DU)) dated 02.08.2018 to this tribunal for adjudication to the following effect.

“Whether the claim of Shri Balbir Singh working as Mess Supervisor between 2014 till May 2016 in AIIMS, Rishikesh against his removal from Mess is legal and justified, if so, what relief he is entitled to?”

The claimant has filed a claim statement stating that he was engaged for catering food in the mess of the Doctors' hostel inside the premises of AIIMS Rishikesh. His engagement was by the Director AIIMS of Rishikesh. He was working as the supervisor of the hostel mess and getting monthly salary of Rs. 15000/-. When the workman was discharging his duty to the satisfaction of the employer i.e. Director AIIMS Rishikesh, Dehradun, suddenly his service was terminated. At the time of termination, no termination notice, duty pay or termination compensation was paid. On the contrary the management withheld 3 months salary of the workman to a tune of Rs. 45000/-. On 20.07.2016 the workman gave a demand notice to the management which was received on 22.07.16. Since management took no action, workman raised a dispute before the Labour Commissioner which was contested by the management. The conciliation since failed, the Appropriate Government made a reference as aforesaid for adjudication. Though the notice was served on the management none appeared on their behalf. After providing several opportunities to the management for filing of Written Statement by order dated 14.12.2018 the management was proceeded ex-parte. Thereafter claimant/workman filed and tendered his affidavit evidence which remained unchallenged. Hence, from the sole oral testimony of the workman, which is not supported by any document it is to be seen if the alleged removal of the workman working as the mess supervisor by the management is legal and justified.

In his sole testimony the claimant/workman has stated that he was engaged by the management for providing catering service in the Doctors hostel Mess in the premises of AIIMS Rishikesh at Dehradun. He alongwith 8 associates carried out the work and continued to do so for 2 years. He was working in the capacity of supervisor and getting monthly salary of Rs. 15000/-. During the course of his duty pursuant to the written order of the management he had purchased Utensils worth Rs. 3619/- for use in the Mess. As per the direction of the management, he had also made deposit of Rs.30000/- as security money for his engagement in the work. But suddenly the management terminated his service withholding 2 months salary. The demand notice raised by the workman was not answered by the management. He then raised a dispute before the Labour Commissioner Dehradun where the management appeared, participated but no fruitful purpose could be served. Hence, this reference was sent by the Appropriate Government.

Except examining himself the workman has not examined any other witness nor produced any documents to support his claim. His own admission in the claim statement and the affidavit clearly indicates that he was working in the Hostel mess of AIIMS as a caterer for providing food to the hoteliers and in the process had invested some money and also made deposit of some amount towards security. The AIIMS management discontinued the service of the claimant as a caterer. Even though the management has not resisted the stand of the claimant, from his own statement it clearly appears that there was a contract between the management and the claimant which was breached. At best the management may be held liable for breach of contract and nothing more. The evidence on record neither suggests the employer and employee relationship between the management and the claimant nor there exist any industrial dispute between them. The reference made by the Appropriate Government appears to be a misconception of fact and law. The reference is accordingly held devoid of merit and accordingly answered. Copy be supplied to the parties and the record be consigned in the record room.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 3 जून, 2019

का.आ.1000.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स सचिव एन.डी.एम.सी. पालिका केंद्र, नई दिल्ली और अन्य एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली के पंचाट (संदर्भ संख्या 07/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.05.2019 को प्राप्त हुए थे।

[सं. एल-42012/108/2011-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 3rd June, 2019

S.O.1000.— In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 07/2011) of the Central Government Industrial Tribunal-cum-Labour Court-2 New Delhi, as shown in the Annexure, in the Industrial Dispute between the employers in relation to The Secretary, N.D.M.C. Palika Kendra, New Delhi and Others, and their workmen which were received by the Central Government on 09.05.2019.

[No. L-42012/108/2011-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 07/2011

Date of Passing Award- 15th April, 2019

Between:

Shri Balak Ram,
S/o Sh. Sohan,
Through the General Secretary,
New Delhi
Nagar Palika Karamchari Union (Regd.)
H-7 Palika Niwas, Lodhi Colony,
New Delhi-110003.

... Workman

Versus

The Secretary,
N.D.M.C. Palika Kendra,
New Delhi. 110001.

... Management

Appearances:-

Shri Hari Ram Tiwari, (Advocate)

For the Workman

Shri M.S. Rawat, (Advocate)

For the Management

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of N.D.M.C Palika Kendra and its workman/claimant herein, under clause (d) of sub section (1) and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L- 42012/108/2011 (IR(DU)) dated 06.02.2012 to this tribunal for adjudication to the following effect.

“Whether the action of the management of New Delhi Municipal Corporation (NDMC) in terminating the services of Shri Balak Ram S/o Shri Sohan, Ex-Beldar w.e.f. 17.11.2009 is legal and justified? What relief the workman is entitled to?”

Being noticed the workman and the management appeared and filed their claim statement and written statement respectively.

In the claim statement the workman has stated that he was inducted to the service of the management on 31.12.1996 on temporary muster roll as Beldar. In due course of time he was taken to regular muster roll and his service was regularized by order dated 21.10.1997 w.e.f. 01.04.1997. At the time of regularization, as per the rule of the management he had submitted an attestation form, indemnity bond and affidavit on 27.08.1999. In the said attestation form and affidavit he had declared his date of birth as 01.08.1956. At that time, being illiterate he had no document to prove his date of birth.

One Udaiveer son of Ved Ram a co-villager of the workman having enmity and property dispute with him gave a written complaint to the authorities and the employer of the workman alleging that as per the primary school certificate of the school, where the workman was reading, his date of birth is 29.12.1945. It was also alleged in the complaint that the workman has already completed 61 years of age as on 28.12.2006. This prompted the management to make an inquiry and a letter was written to the District Basic Education Officer Bulandsher U.P to verify the correctness of the allegation. The District Basic Education Officer in his letter dated 22.09.2009, while enclosing the photocopy of the school leaving certificate intimated that the date of birth of the workman as per the school record is 29.12.1945. Since, on that day the workman had already attained the age of superannuation, the management terminated his service w.e.f. 31.12.2005 holding the said date as the date of his superannuation. At the time of termination of service, no notice was served on the workman nor any chargesheet, or domestic inquiry was conducted against him. The workman served a demand notice on the management on 04.02.2010. But the management paid deaf year to the same. Having no other remedy the workman again approached the Labour Commissioner where a conciliation proceeding was taken up. Since the conciliation failed, a reference was made by the appropriate government for adjudication of the dispute. The workman in his claim statement has prayed that the arbitrary order of termination passed by the management is liable to be set aside. He has also prayed for reinstatement to service with all back wages and consequential benefit.

In the written statement the management has admitted that the workman was initially appointed as a Beldar in temporary muster roll and his service was regularized w.e.f. 01.04.1997. At that time the workman has submitted an attestation form, affidavit containing personal details. In the prescribed Performa it was clearly mentioned that any false disclosure shall entail action. The workman having full knowledge of the same furnished false information relating to his date of birth which could be established after a due and proper inquiry. Since by the time the enquiry was completed, the workman had crossed the age of superannuation, his service was brought to an end forthwith. There was no violation of Principles of Natural Justice, nor any requirement for serving the notice on him.

The workman in his rejoinder had stated that a false complaint was made at the behest of his enemy. The management without giving him opportunity of being heard passed one sided order.

On the rival pleading following Points emerged for adjudication.

1. If the termination/cessation of the service of the workman w.e.f. 17.11.2009 is legal and proper.
2. To what relief the workman is entitled to.

Point No. 1

The workman examined himself as WW1 and tendered some documents marked in the series of WW1/1 to WW1/8. These documents include the Pariwar Register of the workman marked as WW1/1 the letter of cessation of his service, the demand notice, the statement of claim filed by him before the conciliation officer etc. similarly on behalf of the management its Section Officer was examined as MW1 who proved the photocopies of the office order regularizing the service of the workman, the copy of the attestation form, affidavit and indemnity bond, submitted by the workman the photocopy of the complaint received from one Udaiveer Singh regarding false declaration of date of birth of the workman, the letters written to the District Basic Education Officer Bulandsher, the reply given by him, photocopy of the school leaving certificate both parties cross examined the witness of the opponent at length.

At the outset of the argument the Ld. A/R of the workman submitted that the entire allegation and dispute are based upon the facts which need to be proved or disproved during the proceeding. He submitted that in this case the management took one sided decision without involving the workman in the inquiry made against him no showcause was even called from him. It is the specific stand of the workman that he is an illiterate person and had never gone to the school. A false document like school leaving certificate has been prepared by his enemies and the management, relying upon the same passed the order to his detriment. Thereby the workman argued that the reference be answered in his favour.

On the other hand the management through its A/R submitted that the enquiry was fair and based upon documents created during an undisputed point of time. The tribunal has no reason for disbelieving the report of the District Basic Education Officer bulandsher and the school leaving certificate submitted by him. Per contra, the Ld. A/R for the workman submitted that in rural areas where the literacy rate was almost zero in 50s and 60s, the maintenance of the Pariwar Register (family Register) by the head of the family or head of the village has been often taken as an authentic document.

The admitted facts are that the workman had submitted an attestation form describing his date of birth to be 01.08.1956. It also not disputed that on receipt of a complaint from an Udaiveer an inquiry was initiated by the management. The school education officer during the inquiry submitted the school leaving certificate of the workman and a report stating therein that as per the school record, the date of birth of the workman is 29.12.1945. The workman has filed certified copies of the order passed by the Civil Judge Bulandsher in OS No. 78/2006 to prove the enmity and civil dispute between him and the complainant Udaiveer Singh. The workman has also filed the copy of the FIR dated 22.08.2008 wherein the workman had alleged assault criminal intimidation and threat etc against the Udaiveer Singh. These documents have not been disputed by the management. On the other hand management has filed the photocopy of the school leaving certificate of the workman and the report of the District Basic Education Officer which go to show that as

per the school record the date of birth of the workman was 29.12.1945. While filing the self decelerated attestation form of the workman the management has tried to prove that the workman is guilty of suppression of material facts and liable for termination.

The management has not examined the Basic School Education Officer or any of his staff as a witness in this proceeding. The school leaving certificated shows that the same was prepared on 06.12.2006 indicating that the student had left school on 11.05.1957 and his date of birth was 29.12.1945. Though in the column the purpose for issue of School leaving certificate has been described as promotion to class 5, the same was prepared on 06.12.2006. The workman has all along pleaded that he had never been to the school for any formal education. On that background the management could have taken a stand in calling for the original school admission register which is a continuous register and has a minimum chance of manipulation. Had that register been produced, this tribunal would have the chance of verifying about the person who had admitted the workman to school and what was the basis for recording his date of birth. In absence of production of the school admission register, the school leaving certificate prepared at a belated date i.e. 06.12.2006 doesn't inspire confidence in the mind to accept that the correct date of birth of the workman is 24.12.1945.

On behalf of the workman the copy of the Pariwar Register has been oduced. This is also the photocopy of the original and doesn't explain why original was not produced. However, the entry in the register shows that this register was maintained by the Gram Panchayat Officer and in the said register the date of birth of the workman has been mentioned as 01.08.1956. This is a register maintained chronologically and minimizes the chance of interpolation.

The Ld. A/R for the workman while placing reliance in the case of G.M., Bharat Cooking Coal Ltd., West Bengal vs. Shib Kumar Dushad and Others reported in AIR 2001 SC 72 submitted that the entries made in the certificate issued by the School Authority is not conclusive and dependent on evidence either oral or documentary. The management disputing the same has failed to discharge the burden of proving the certificate. Relying on the case of Shib Kumar referred supra, he also argued that when the employee is at the verge of retirement, correction in service record is not be accepted generally.

In this case as stated earlier the management could have produced the school admission register to prove, by whom and on the basis of what evidence the date of birth of the workman was recorded. In absence of such proof the school leaving certificate prepared and submitted by the District education officer cannot be accepted as the conclusive prove of date of Birth of the workman. This tribunal also find no reason of rejecting the entries regarding the date of birth of the workman as mentioned in his Adhar Card, Voter-i-card, Pan Card and LIC Policy, which are based upon the entry in the Pariwar Register created during an undisputed point of time.

It is worth mentioning here that when the management was conducting an inquiry on the complaint regarding the date of birth of the workman, surprisingly the workman was not given opportunity to participate in the inquiry or offer his explanation to disprove the allegation relating to his date of birth. It is also surprising that the management remained satisfied with the school leaving certificate received from the Dist. Education Officer which was in conflict with the date of birth declared by the workman. In such a situation the proper recourse would have been to subject the workman to a medical examination like Ossification Test. That having not been done by the management, it is difficult to accept the school leaving certificate as the proof for the date of birth of the workman. The decision of the management in terminating the service of the workman on the basis of the disputed date of birth is held to be illegal and has no leg to stand.

While accepting the date of birth of the workman to be 01.08.1956, it is observed that he has already crossed the age of superannuation w.e.f. 31.08.2016. Hence, this tribunal doesn't find it proper to pass an order of reinstatement in favour of the workman though it is held that the workman is entitled to his full back wage w.e.f. 31.12.2005 when his service was terminated/ceased by the order of the management till the date of his superannuation i.e. 31.08.2016 together with all other service benefits. He will be deemed to have retired on 31.08.2016. Hence, ordered.

ORDER

The reference be and the same is answered in the favour of the workman. The decision of the management of NDMC in terminating the service of Shri. Balak Ram w.e.f. 31.12.2005 by order dated 18.11.2009 is held to be illegal and the workman is held entitled to continue in service till 31.08.2016. He is also held entitled to full back wage and all other service benefits from the date of termination till 31.08.2016 without interest. All the financial benefits of the workman shall be paid by the management within 3 months from the date when the order would become executable failing which the amount shall carry interest at the rate of 12% per annum from the date of termination till the amount is paid in full. Copy be supplied to the parties and the record be consigned in the record room.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 3 जून, 2019

का.आ.1001.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स अध्यक्ष, केन्द्रीय माध्यमिक शिक्षा बोर्ड, प्रीत विहार, दिल्ली और अन्य एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली के पंचाट (संदर्भ संख्या 21/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 16.05.2019 को प्राप्त हुए थे।

[सं. एल-42025/03/2019-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 3rd June, 2019

S.O. 1001.— In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 21/2016) of the Central Government Industrial Tribunal-cum-Labour Court-2 New Delhi, as shown in the Annexure, in the Industrial Dispute between the employers in relation to The Chairman, Central Board of Secondary Education, Preet Vihar, Delhi and Others, and their workmen which were received by the Central Government on 16.05.2019.

[No. L-42025/03/2019-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI**

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 21/2016**Date of Passing Award- 26th April, 2019.****Between:**

Shri Ramesh Chand & 44 Ors.
(As per Annexure Attached)
Through, General Secretary,
Delhi Offices And Establishment Employees Union,
13-A, Rouse Avenue, ITO,
New Delhi- 110002.

... Workmen

Versus

1. The Chairman,
Central Board of Secondary Education,
Siksha Kendra, 2-Community Centre,
Preet Vihar, Delhi- 110092.
2. The Managing Director,
New Grow Software Solutions Pvt. Ltd.
DLF Tower, 341, Moti Nagar, 3rd Floor,
New Delhi- 110008.

... Managements

Appearances:-

Shri B. K. Prasad, Advocate

For the Workman

None for the management, Advocate

For the Management

AWARD

The Government of India in Ministry Of Labour has referred the present dispute existing between employer i.e. the management Central Board of Secondary Education, and its workmen/claimants herein, under clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter no. L-42011/20/2016 (IR (DU) dated 30.03.2016 to this tribunal for adjudication to the following effect.

“Whether the arrangement between Central Board of Secondary Education and New Grow Software Solutions (P) Ltd., is sham and camouflage? If yes whether the workmen Sh. Ramesh Chand and 44 others are entitled to regularization from the date of their initial appointment. If not to what relief the workmen concerned are entitled to?

In the claim statement it has been asserted that the workmen 45 in number (as per list enclosed) were engaged by the management No. 1 i.e. CBSE as MTS/Computer Assistant/Electrician on the date mentioned against their names and continued to work under the direct control and supervision of management No. 1. Though they were appointed as temporary and casual workers their services were allowed to continue by the management No. 1 with artificial break of 2 or 3 days at an interval of 3 months. The work tenure of the workmen for the management No. 1 varies from 10 years to 1 year. All of them were appointed against permanent post and out of the 45 workmen one has completed 10 years, three completed 9 years, two completed 8 years, two completed 6 years, two completed 5 years, twelve completed 4 years, two completed 3 years, Eleven completed 2 years, and 9 completed one year of service with the management No.1.

The further contention of the workmen is that in the year 2010 management No. 1 had notified its vacancies in the website and the workmen in response to the same submitted applications. They were asked to appear in a test and interview conducted by the management. Being found suitable, they were recruited on contractual basis with specified terms and conditions. At that time they were assured by the management to be regularized in due course. When the workmen were discharging their duties with all sincerity with management No. 1 in the year 2012 the management No. 1 entered into a contract with management No. 2 for a period of 6 months. The contract was discontinued w.e.f. 30.06.2012. Again in August 2014 management No. 1 entered into a fresh contract with management No. 2 and since then made an arrangement for payment of wages to the workmen through management No. 2. During this period the workmen were not getting their wages regularly. The management No. 1 manipulated the situation to show the workmen as the employees of management No.2 though the management No. 1 is barred u/s 10 of the Contract Labour (Regulation and Abolition) Act 1970) to engage contract Labour against the jobs of perennial in nature. The contract between the management No. 1 and 2 was sham and camouflage and designed to deprive the workmen of their legal rights. The workmen then apprised their union and through the Union served a demand notice on the management. The management though received the notice did not take action compelling the workmen to approach the appropriate government. The conciliation proceeding held by the Labour Commissioner failed and during the pendency of the Industrial Dispute before the Labour Commissioner, the management No. 1 terminated the service of some of the workmen on 27.06.15 and some others on 01.07.15. A reference being made by the Appropriate Government they filed a claim statement praying for a declaration that the arrangement between management No. 1 and 2 is sham and camouflage, the workmen are entitled to regularization of their services from the date of their initial appointment and for a direction that workmen be paid pay at par with the regular employees from the date of regularization, management No.1 be directed to pay the arrear wages and differential wages after regularization.

Management No. 2 appeared and filed written statement stating therein that there was an agreement between management No. 1 and management No. 2 for providing manpower for administrative and technical cadre. Accordingly the management No. 2 has provided manpower to management No. 1 and paying them salary to be reimbursed by management No. 1. This management has taken a stand that there is no relationship between it and the workmen as an employer and employee and thus, the proceeding is not maintainable against management No.2. It has denied the allegation that the contract between management No. 1 and 2 is sham and camouflage.

Management No. 1 has also filed written statement challenging the maintainability of the proceeding on the ground that CBSE is an autonomous body governed by its own Rule. The workmen were initially engaged as contract workers through one Agency named M/s Neha Aviation Management Pvt. Ltd. on contractual basis and were paid remuneration through Cheque. They were never appointed on regular basis and their appointments having not been done following the rule and procedure of CBSE for recruitment, their service cannot be regularized in view of the decision of the Hon'ble Supreme Court of India passed by the constitution bench in the case of **Secretary State of Karnataka and Others vs. Uma Devi**. While denying their claim of appointment against permanent vacant sanctioned post the answering management took a stand that they being contractual casual workers not appointed through a proper selection procedure recognized by the relevant rule and procedure, cannot invoke the jurisdiction of this tribunal for their regularization of service. While denying the cause of action this management has stated that there is no employer employee relationship between the management No. 1 and the workmen and their plea for regularization need to be dismissed.

On this rival pleadings following points emerged for consideration during adjudication.

- a. If the proceeding is maintainable.
- b. If the claimants/workmen are entitled to the relief of regularization of their service from the date of their initial appointment.
- c. If the workmen on the event of regularization of their service are entitled to full pay at par with the regular employees of the same cadre and arrear of the differential salary.

Though both management No. 1 and 2 had initially participated in the proceeding by filing written statement, on a later date management No. 2 did not choose to participate at all. Though management no. 1 i.e. CBSE was participating in the proceeding through its A/R till the end, opted not to adduce any oral or documentary evidence. The workmen examined one of the claimants as WW1 and proved certain documents marked in a series of WW1/1 to WW1/5. This witness was not cross-examined by any of the management and thus, his evidence remained almost unchallenged.

Point No. 1

In the written statement filed, both the managements have stated that the workmen have no cause of action for initiating this proceeding and thus, the same is not maintainable. During the proceeding no serious challenge was raised in this regard by the managements. The pleading and the evidence adduced on the behalf of the management clearly indicate that the workmen were demanding regularization of their services and after proper espouser they had served a demand notice on the management. The copy of the demand notice and its postal receipt has been filed and exhibited during the course of adjudication. The oral evidence adduced by the witness on behalf of the workmen further reveals that the management No.1 did not take any action on the said demand notice as a result of which a claim was made before the labour commissioner. The evidence further reveals that before the Labour commissioner a conciliation proceeding was initiated but the same could not yield any result and the commissioner reported the same to the appropriate government which, in turn made the reference. Hence, in view of the pleading and evidence it is held that the workmen have a cause of action to raise this dispute. This point is accordingly answered.

POINT No. 2

In the claim statement the workmen have alleged that their appointment was made initially on a contractual basis for a period of 6 months. But the management No. 1 allowed them to work continuously years after years on daily wage basis. In order to deprive them of their legitimate right their appointment were renewed with artificial break. During the period of engagement they were working under the control and supervision of the management No. 1 who was also paying them salary directly. In the year 2012 suddenly management No. 1 made some arrangement with management No. 2 and tried to place the service of the claimant/workmen under the disposal of the management No. 2. However that arrangement remained in force for a period of 6 months and discontinued thereafter. In august 2014 management No.1 again entered into an arrangement with management No. 2 and since then routed the salaries of the workmen through management No. 2 as if they are the employees of management No. 2. The management No. 1 was regularly deducting the EPF and ESI dues from the earned salary of the workmen. Thus, the workmen have taken the stand that they were never the employees of management No.2.

The further stand of the workmen is that in the year 2010 CBSE the management No. 1 had notified to fillup its vacancies in the official website. In response to the same the workmen made application for different post. Eligibility test and interview was conducted by management No.1 for selection and the workmen were issued appointment letter containing terms and conditions of the employment. The appointment letter of some of the workmen have been filed and exhibited on the behalf of the claimants.

The management No. 2 as stated earlier has not adduced any evidence. It has only admitted in the written statement that as per the arrangement between management No. 1 and 2 he had provided manpower for administrative and technical post. He was paying remuneration to those persons in advance and getting reimbursement from Management No. 1. In the written statement the management No. 2 has not admitted or denied specifically about the claimants/workmen of this proceeding. However it has clearly denied to have any kind of relationship with the claimant/workmen of this proceeding.

Management No.1 i.e. CBSE has clearly denied about its relationship as employer with the claimants. Its specific stand is that they were engaged through the contractor i.e. the management No. 2 which has been denied by the later. On the contrary the workmen have pleaded that the arrangement between the management No. 1 and Management No. 2 was sham and camouflage designed to deprive them of their legitimate right. It is the further stand of the workmen that they were working under the supervision and control of management No. 1 having no direct or indirect relationship with the management No.2. The pleadings of the parties have made it necessary to examine if there exist any employer employee relationship between management No.1 and the claimants.

In the case of Steel Authority of India vs. National Union Waterfront Worker Union reported in (2001) 7SCC Page 1, the Hon'ble Apex Court have prescribed for the effective control test to ascertain about the relationship of the workman with

the management or the contractor. Not only that in the case of **Chintaman Rao (1958(II)LLJ252)** the Apex court ruled that the concept of employment involves 3 ingredients (i) Employer (ii) Employee (iii) Contract of Employment. The employer is one who employs or engages the service of other person. The employee is one who works for another for hire. The employment is the contract of service between the employer and employee, where under the employee agrees to serve the employer subject to his control and supervision. In the case of **Food Corporation of India reported in (1985(ii) LLJ4)** the Hon'ble Apex Court pronounced that the contract of employment always discloses a relationship of command and obedience between them. Where a contractor employs a workman to do the work which he contracted with a third person to accomplish, the workman of the contractor would not become more than the workman of the third person. Not only that the manner of work is to be distinguished from the type of work to be performed. In the case of **Ram Singh and Others vs. Union Territory Chandigarh and Others (2004)1 SCC 126** the Hon'ble Apex Court have elaborately discussed the factors to be considered for determining the employer employee relationship and the factors include control, integration power of appointment, liability to pay, liability to organize work etc. Thus, from the above analysis of the Principle of Law, it emerges that the effective control is a test to determine the employer employee relationship between the parties.

In this proceeding the workmen have all along maintained that they were working under the supervision and control of management No.1 having no relationship with management No.2. The later in the written statement has also clarified that except paying salary and getting reimbursement of the same for the workmen from the management No.1 it had no more relationship with the workmen. It is a decided principle of law that employer and employee relationship is a question of fact and the burden lies on him who asserts existence of the same. In this case the workmen have taken a stand and successfully established their relationship with management No.1 as its employee. Hence, now it is to be seen if the demand for regularization of service by the workmen is justified.

In the written statement the management No.1 have referred to the judgment the Constitution Bench of the Hon'ble Supreme Court passed in the case of **Secretary State of Karnatak and Others vs. Uma devi reported in (2006) 4 SCC Page1** and contended that the workmen of this proceeding since appointed for a fixed term on casual basis their claim for regularization is not maintainable. It has further been pleaded by management No. 1 that CBSE is an autonomous body having its own rules and procedure of recruitment. The workmen were never appointed following the said procedure and rule and their appointment were never against regular vacancy. Be it stated here that the management No.1 has not adduced any oral or documentary evidence to fortify the stand taken in this regard in the WS. In the case of Uma Devi referred supra the Hon'ble Supreme Court have held that the appointment of contractual employee and regularization of their services is not an automatic process and when a person was given appointment skipping the prescribed rule through a back door, cannot claim absorption or regularization against a sanctioned vacant post. This issue came up for consideration before Hon'ble Apex Court again in the case of Hari Nandan Prasad vs. Employer I/R to management of Food Corporation of India and another reported in AIR 2014 SC 1848, wherein the issue, whether the Labour Court Tribunal has the jurisdiction to order regularization of the workmen was considered in the context of the provision of the Act and the decision of the constitution bench in the case of Uma Devi. The Hon'ble Apex Court came to hold that the powers conferred upon the Industrial Tribunal/Labour Court under the ID Act are quite wide. The Act deals with industrial Disputes, provides for conciliation, adjudication, and settlements, and regulates the rights of the parties and the enforcement of the award and settlement. Not only that way back in the year 1950 in the case of Bharat Bank Limited vs. Employees of Bharat Bank reported in (1950) LLJ 921 The Hon'ble Supreme Court had observed:

“In settling the disputes between the employers and the workmen, the function of the Tribunal is not confined to administration of justice in accordance with law. It can confer rights and privileges on either party which it considers reasonable and proper, though they may not be within the terms of any existing agreement. It has not merely to interpret or give effect to the contractual rights and obligations of the parties. It can create new rights and obligations between them which it considers essential for keeping industrial peace.”

In the above said backdrop and considering the different pronouncements on the Hon'ble Apex Court while reverting to the facts of the present case the grievance of the claimants is that they were appointed against the post the nature of work performed is perennial and those are permanent vacancies. Though they were appointed on casual basis are discharging their duties with utmost satisfaction of the employer i.e. Management No.1 but the management No.1 by entering into a camouflage with management No.2 is trying to deprive them of their legitimate rights by causing artificial break in their service. These aspects as pleaded by the workmen have been denied by the management No.1 in the WS only. On behalf of the workmen the appointment letter of some of the claimants, their salary bills etc have been filed. These documents have not been controverted by the management and go to show that the claimant/workmen were issued appointment letter after their selection through one walk-in-interview process. Majority of the workmen are still in service except the

few whose service has been terminated on two dates i.e. on 27.06.2015 and 01.07.2015 when a conciliation proceeding between the parties was in progress before the Labour Commissioner. Moreover the document which are in the nature of monthly sanctioned order of the salary by the designated authorities of the management No.1 clearly establishes that the present workmen are working under the effective control and supervision of management No.1 and at no point of time their service was discontinued nor placed under the disposal of management No.2.

During course of argument Ld. Counsel for the workmen drew the attention of this tribunal to the case of **J and K Bank Limited vs. CGIT reported in 2018 Lab. I.C. Page 2970** passed by the Hon'ble High Court of Jammu and Kashmir in which the case of Hari Nandan Prasad and Uma Devi refereed supra was elaborately discussed with regard to the effect and implication of the constitution bench decision of the Apex Court in the case of Uma Devi. In the said judgment reference has been made to the case of **Maharashtra SRTC. Casteribe Rajya Parivahan Karmchari Sangathan (2009)8 SCC 556** in which the issue before the Hon'ble Supreme Court was with regard to the jurisdiction of the Industrial court to give status wages and all other benefits of permanency to the workmen who had been serving for years as cleaners in the corporation in temporary capacity. Relying upon Uma Devi, plea was raised on behalf of the corporation that granting permanent status to the casual workers/daily wager was not sustainable in law. Repealing the said argument the Hon'ble Supreme court in Para 32 and 33 of the judgment have observed:-

“32. The power given to the Industrial and Labour Courts under Section 30 is very wide and affirmative action mentioned therein is inclusive and exhaustive. Employing badlis, casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees is an unfair labour practice on the part of the employer under Item 6 of Schedule IV. Once such unfair labour practice on the part of the employer is established in the complaint, the Industrial and Labour Courts are empowered to issue preventive as well as positive direction to an erring employer.

“33. The provisions of MRTU and PULP Act and the powers of Industrial Labour Courts provided therein were not at all under consideration in the case of Uma Devi1. As a matter of fact, the issue like the present one pertaining to unfair labour practice was not at all referred, considered or decided in Umadevi1. Unfair labour practice on the part of the employer in engaging employees as badlies, casuals or temporaries and to continue them as such for years with the object of depriving them of the status and privileges of permanent employees as provided in Item 6 of Schedule IV and the power of Industrial and Labour Courts under section 30 of the Act did not fall for adjudication or consideration before the constitution Bench”.

Thus, on a harmonious reading of the different pronouncements of the Hon'ble Apex Court this tribunal in absence of evidence to contrary comes to hold that the workmen were selected through a selection procedure may be through a walk-in-interview as decided by the management and issued appointment letter which was renewed from time to time for the perennial nature of work and during the course of their employment they are under the effective control and supervision of management No.1. Except pleading in the written statement that the workmen were never appointed against permanent vacancy no other evidence has been adduced by the mangementno.1. Since the workmen are working continuously and their nature of work is such that at no point of time they were disengaged and in the process they have completed work for 240 days or more in a calendar year, they are held entitled to regularization of their services from the date of their initial appointment with current and back wages at par with the regular employee of similar cadre. This point is accordingly answered in favour of the workmen.

Point No.3

In view of the finding of point no.2 this tribunal is of the opinion that the workmen/claimants are entitled to regularization of their services in the post they were appointed from the date of their initial appointment as mentioned in the list appended to this award back wages in the appropriate scale of the said post against which they were appointed. This point is accordingly answered. Hence, ordered.

ORDER

The workmen as per the list appended to this award are held entitled to regularization of their services in the post they were appointed from the date of their initial appointment as mentioned in the list against their names and they are also held entitled to the back wages in the appropriate scale of the said post against which they were appointed. The management no.1 is directed to complete the exercise of the regularization within 3 months from the date when this award would become enforceable and pay the financial dues of the workmen which has accrued in their favour without interest within 4 months from the date of notification of the award failing which the amount so accrued shall carry

interest at the rate of 12% per annum from the date when the award becomes enforceable and till the payment is finally made. Copy be supplied to the parties and the record be consigned in the record room.

The reference is accordingly answered.

LIST OF WORKMEN

Sr. No.	Name & Father/husband's Name	Date of joining/year of joining	Designation
1.	Ramesh Chand S/o Sh. Shyam singh	2006	MTS
2.	Sunder singh S/o Sh. Tika Ram	2006	MTS
3.	Pradeep Kumar S/o Shri Prakash	2006	MTS
4.	Vipin Kumar S/o. Sh. Baljor singh	2007	MTS
5.	Atar Singh S/o Shri Karam Singh	01.02.2007	MTS
6.	Arvind Kumar S/o Sh. Kalu Ram	01.01.2009	MTS
7.	Birjesh Kumar S/o sh. Kalu Ram	01.02.2011	MTS
8.	Ravinder Kumar S/o Sh. Ranveer Singh	2011	MTS
9.	Diwan Giri S/o Sh. Baag Giri	23.09.2011	MTS
10.	Mukesh Prasad S/o Sh. Ayodhya Prasad	01.10.2011	MTS
11.	Manoj S/o Murari Lal	2011	MTS
12.	Amar S/o. Sh. Vijender	2011	MTS
13.	Ajay Kumar S/o Sh. Om Prakash Sharma	2011	MTS
14.	Ved veer S/o Sh. Gopal Prashad	19.05.2013	MTS
15.	Manish Kumar-I S/o Sh. Om singh	2013	MTS
16.	Rahul Kumar S/o Shri Raj Kumar	2013	MTS
17.	Hitender Kumar S/o sh. Veg Pal Singh	01.02.2013	MTS
18.	Rajbeer Sagar S/o Shri. Ramphal	03.10.2013	MTS
19.	Sunil Kumar S/o sh. Mohar Singh	21.10.2013	MTS
20.	Rahul Rawat S/o Shri. Ratan Singh Rawat	11.12.2013	MTS
21.	Naveen Kumar S/o Sultan Singh	15.02.2013	MTS
22.	Shezad S/o sh. Farukh	April, 2012	MTS
23.	Manish Kumar-II S/o Sh. Madan singh	01.04.2014	MTS
24.	Amit Kataria S/o Sh. Dharam Pal Singh	18.02.2014	MTS
25.	Inder Pal S/o Sh. Braham Singh	22.04.2014	MTS
26.	Gaurav Kumar S/o Shri. Bhim singh	2014	MTS

27	Sawaz S/o Shri Farukh	01.08.2014	MTS
28	Sarvan Kumar S/o Shri Ompal Singh	March, 2014	MTS
29	Suresh Kumar S/o Shri Mam Chand	15.03.2005	MTS
30	Deepak Kumar S/o Late Sh. Chaman Lal	10.03.2013	MTS
31	Deepak S/o Sh Laxmi Narayan	12.11.2013	MTS
32	Prashant Sharma S/o Sh. R.A. Sharma	December, 2009	Comp. Asstt.
33	Rahul Jain S/o Sh. Raj Kumar Jain	March, 2010	Comp. Asstt.
34	Kashmiri W/o Sh. Parveen Rawat	December, 2010	Comp. Asstt.
35	Vipin Kumar S/o Sh. Jagdish Chandra	2011	Comp. Asstt.
36	Shalini Gupta D/o Sh. D.K. Gupta	May, 2011	Comp. Asstt.
37	Poonam Bisht W/o sh. Dinesh Singh	October, 2011	Comp. Asstt.
38	Puneet Sharma S/o Sh. Rajesh Mohan Sharma	October, 2011	Comp. Asstt.
39	Hema D/o Late Sh. Udai Singh	November, 2011	Comp. Asstt.
40	Raj Singh S/o sh. Devi Singh	2012	Comp. Asstt.
41	Sandeep singh S/o Sh. Vijay Pal Singh	19.02.2013	Comp. Asstt.
42	Tarun Kumar S/o sh. Ramvir Singh	01.02.2013	Comp. Asstt.
43	Sandeep Kumar S/o Sh. Duni Chand	01.02.2014	Comp. Asstt.
44	Manoj Kumar S/o Sh. Rampal singh	03.03.2014	Comp. Asstt.
45	Ashwani S/o Sh. Dayanand Gupta	10.09.2013	Electrician

PRANITA MOHANTY , Presiding Officer

नई दिल्ली, 3 जून, 2019

का.आ.1002.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स प्रभारी, बी.एस.एफ. अस्पताल, तिगरी कैप, नई दिल्ली और अन्य एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली के पंचाट (संदर्भ संख्या 36/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 16.05.2019 को प्राप्त हुए थे।

[सं. एल-42012/89/2005-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 3rd June, 2019

S.O.1002.— In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 36/2006) of the Central Government Industrial Tribunal-cum-Labour Court-2 New Delhi, as shown in the Annexure, in the Industrial Dispute between the employers in relation to The Incharge, B.S.F. Hospital, Tigri Camp. New Delhi and Others, and their workmen which were received by the Central Government on 16.05.2019.

[No. L-42012/89/2005-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 36/2006

Date of Passing Award- 29th April, 2019

Between:

Shri Rajinder Kumar
C/o The President,
Janvadi General Kamgar Mazdoor Union,
E-26 (Old Quarter) Raja Bazar,
Baba Kharak Singh Marg,
New Delhi- 110001.

... Workman

Versus

The Incharge,
B.S.F. Hospital,
Tigri Camp.,
New Delhi.

... Management

Appearances:-

Shri. B.K. Prasad, (Advocate)

For the Workman.

Shri. S. Yadav, (Advocate)

For the Management.

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of B.S.F. Hospital, and its workman/claimant herein, under clause (d) of sub section (1) and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L- 42012/89/2005 (IR(CM-II) dated 12.06.2006 to this tribunal for adjudication to the following effect.

“Whether the action of the management of B.S.F Hospital, Tigri Camp in terminating the services of Shri. Rajinder Kumar w.e.f. 03.11.2003 is legal and justified? If not, to what relief the workman is entitled?

The claimant filed the claim statement contending that he was appointed as a sweeper with the management on 22.11.1996 in the pay scale of 700-25-1000 and the said pay was revised from time to time and on the date of termination of service his salary was 2415/- per month. The workman had raised an industrial dispute before the Assistant Labour Commissioner-Cum-Conciliation Officer on 08.09.2002 demanding grant of equal pay for equal work and other facilities at par with other Group-D employees of BSF Hospital. Notice was served in this regard on the management on 09.09.2003. Soon after the receipt of the notice management stopped the salary of the workman for the month of September, October and November 2003 in order to take revenge on him. The revenge full act of the management did not stop there as the management on 03.11.2003 terminated his service. At the time of termination neither termination notice, notice pay, nor the retrenchment compensation was paid to him. The termination was without prior permission of the

Labour Commissioner before whom and Industrial Dispute was pending and thereby amounts to violation of Section 33 causing change of service condition. One complaint in this regard was made before the Labour Commissioner and the conciliation proceeding taken up failed. Thus, the Appropriate Government referred the matter to this tribunal for adjudication.

The management filed WS opposing the claim of the workman, but admitted the fact that the claimant was appointed as a sweeper temporarily under the Special relief fund of the BSF which is private in nature and managed out of the contribution made by serving BSF personnel without any grant or aid from the Government. The claimant was appointed as a sweeper (civilian) in the Hospital at Signal Training School Tigri Camp New Delhi purely on temporary basis. He was guilty of habitual absence from duty and for that reason the work assigned to him had suffered substantially. During the period between June 2003 to December 2003 he remained absent for 155 days without any valid and genuine reason. He also remained continuously absent from duty w.e.f. 04.11.2003 without any intimation. Thus, with prior approval of the authority his service was terminated on administrative ground by the competent authority with one month salary in lieu of one month notice on 9.12.2003. The further contention of the management is that he was not a regular employee and as per the condition of employment his service can be terminated any time without prior notice however the notice was sent to him before his termination.

It is the further stand of the management that another Industrial Dispute was raised by this workman demanding equal pay and benefits at par with a regular employees of BSF but the CGIT-II in an award passed refused the claim of the workman. Maintaining the stand that the workman was a temporary employee, the respondent stated that there was no need for serving any notice on him or taking prior approval of the Labour Commissioner. The management has pleaded for dismissal of the Industrial Dispute.

On the basis of the pleading following points emerge for adjudication.

1. Whether the service of the workman has been illegally or unjustifiably terminated by the management.
2. To what relief the workman is entitled to.

The workman examined himself as WW1 and deposed along the lines of the statement of claim submitted by him. He also exhibited certain documents which include his appointment letter and termination letter. He was cross-examined by the management during which he denied the suggestion of unauthorized and long absence from duty. The management also examined one of its officer as MW1 who proved series of documents marked as MW1/A to MW1/G.

FINDINGS

POINT No. 1

The workman as well as the management relied upon the appointment letter issued to the workman at the time of his initial appointment. This has been filed by respondent as Annexure-R1. This admitted document shows that the claimant Rajinder Kumar was appointed as a sweeper on consolidated salary of Rs. 700 to 1000/- w.e.f. 22.11.1996 and the payment of salary was payable from the special relief fund of FHQ. Whereas the workman argued that the appointment letter never recites the word temporary for his status, the management has explained that the Border Security Force is a Government of India organization and the special relief fund is a fund raised out of the contribution made by serving BSF personnel and under the control of ministry of Home Affairs. For appointment of sweeper and any other staff utilizing the money from SRF prior permission from the authority is required. During appointment of the workman such prior permission was obtained which has been also marked as Annexure-R1. The management has relied upon another document marked as Annexure-R3 which is a circular issued by the Government of India Ministry of Home Affairs dated 20.11.2003. In this circular the government has clarified that any appointment to be made under the SRF shall be with prior permission of the authority, shall not confer any right for regularization on the appointee and the same appointment shall not be counted towards regular service pensionary and other financial benefits. On the strength of this document the management pleaded that the engagement of the claimant was purely temporary and terminable with the prior permission of the authority. In the case of present workman the prior permission was obtained for his termination on account of his unauthorized absence. The witness examined on behalf of the management has stated that before such termination one month salary in lieu of the notice was ordered to be paid and infact a cheque was sent in the address furnished by him but the same returned undelivered. Thereby the management has pleaded that no illegality was committed while terminating the service of the workman.

In order to decide the justifiability of the termination order it is necessary to examine if appointment was temporary and conditional in nature. On a plain reading of the appointment letter filed by the management as Annexure-R1 shows that the workman was appointed w.e.f. 22.11.1996 on a particular pay scale and there is no specification or stipulation regarding the period of his appointment. The circular of the home department filed by the management as Annexure-R3 though prescribes for appointment for a period of 1 year, in the case of the present workman there was no such time stipulation in the appointment letter. The circular under reference, speaks that the service rendered by a person appointed

under the SRF will not be counted for regular service & pensionary benefit etc. But there is no condition that the appointment will be purely temporary in nature. The witness examined by the management also during cross-examination failed to say if the workman was in a permanent or temporary nature of job. Thus, considering the oral and documentary evidence adduced by the parties this tribunal finds no reason to reject the stand of the workman that he was not appointed on a temporary basis.

Once it is held that the workman was not a temporary employee, it is necessary to examine if his termination was illegal and contrary to the provisions of industrial dispute Act. The allegation of the workman is that without any valid reason, his service was terminated in gross violation of the provisions of section 33 of the ID Act when an industrial dispute was pending before the Labour Commissioner. The management has admitted all other things stated by the workman except the fact that there was violation of section 33 since the claimant is not a workman and the Hospital is not an industry. It is also admitted by the management through its witness examined as MW1 that no inquiry for the unauthorized absence of the workman was conducted before the order of termination was passed. This itself amounts to violation of the principles of Natural justice as the workman was never offered the opportunity of explaining the cause of his absence and the order of termination was unilaterally passed which makes the order of termination illegal.

The admitted facts are that there was a dispute pending between the claimant and the management before the Labour Commissioner in the year 2003 relating to demand of the workman for equal pay and remuneration. It is immaterial whether the workman succeeded in his claim or not. It would be profitable to refer to section 33 of the ID Act which provides that during the pendency of an Industrial dispute no employer shall change the conditions of the service of the workman without prior approval of the authority before whom the dispute is pending. Admittedly no such approval was obtained by the management when the order of termination was passed against the workman on 19.12.2003 on the face of a pending Industrial Dispute before the Labour Commissioner. The stand of the management that the hospital is not an industry to bring the claimant under the definition of the workman is not accepted for the definition given under section 2(i) of the Contract Labour (regulation and abolition Act) 1970. Moreover the hospital very well falls under the definition of industry as mentioned under the ID Act. Reverting back to the allegation of the workman that his condition of the service was changed during the pendency of the Industrial Dispute is apparent and admitted by the management on the face of the record. Hence, it is held that the service condition of the workman was changed without prior permission of the industrial adjudicator.

The workman has also alleged that no notice, of termination or notice pay, etc was served on him before the termination. The explanation offered by the management is that a termination notice alongwith one month pay in lieu of notice was sent in his address but could not be delivered for wrong address. Step was taken for publicity of the notice in the local newspaper. Some documents in this regard has been filed by the management which include copy of the newspaper and report of the officer assigned the duty of serving the notice. The photocopy of the postal cover has also been filed. During cross-examination the workman admitted that the address in which the notice was sent was his temporary address during the service and the permanent address is as has been mentioned in the affidavit. But the respondent/management has stated that no such permanent address was ever furnished by the workman. Thus, from the totality of the evidence this tribunal has reason to believe that the workman had not furnished any other address than the one in which the notice and pay were sent. As a result thereof no blame can be thrust upon the management for not complying section 25-F of the ID Act. But the fact remains that no notice or notice pay could be served on the workman before termination of his job. At the same time it is held that the termination of the service of the workman at the instance of the management is illegal for the admitted position that the termination was made during the pendency of dispute before the Labour Commissioner without his permission. This point no. 1 is accordingly answered in favour of the workman.

POINT NO. 2

The workman has prayed for setting aside the order of termination with all arrears and other consequential benefit. The Ld. A/R for the workman argued that in the case of Jaipur Zila Sahkari Bhoomi Vikas Bank Limited vs. Shri Ram Gopal Sharma and others reported in Civil Appeal No. 87-88 of 1986 decided on 01.01.2002 it has been held by the Hon'ble Supreme Court that during the pendency of an industrial dispute if an order of dismissal is passed without approval under section 33(2)(b), the employee shall be deemed to have continued in service entitling him to all the benefits available. Separate order for his reinstatement not required. He also argued that when the evidence shows non compliance of section 25-F of the ID Act the effect would be reinstatement with full back wages. In this regard he has placed reliance in the case of Jasmer Singh vs. State of Haryana reported in 2015(1) SCALE360. On the basis of these judgments argument was advanced that the workman was illegally terminated and he is entitled to get all the service benefits w.e.f. 3.11.2003. On careful perusal of the judgment of the Jaipure Zila and Jasmer Singh referred supra on the face of the evidence on record this tribunal is of the opinion that the workman Rajinder Kumar's service was terminated illegally during the pendency of the Industrial Dispute and thereby he is deemed to be in service on 3.11.2003 and thereafter in the post and scale as he was on the date of termination. He is also held entitled to the service benefits like salary, for the said period. This point is accordingly answered in favor of the workman. Hence, ordered.

ORDER

The reference be and the same is answered on the contest in favour of the workman. The order of termination dated 03.11.2003 passed by the management is held to be illegal. It is directed that the workman shall be deemed to be in service on 03.11.2003 and thereafter. He is held entitled to salary payable to him during this period. It is also ordered that the arrear salary shall carry simple interest at the rate of 6% per annum till the same is paid to the workman. The management shall allow the workman to join his duty forthwith and pay the arrear of the salary within 3 months from the date when the award would become enforceable. Failing which the accrued amount shall carry interest at the rate of 12% per annum from the date of accrual till the final payment is made. Copy be supplied to the parties and the record be consigned in the record room.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 3 जून, 2019

का.आ.1003.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स एन सी सी लिमिटेड नागार्जुन कंस्ट्रक्शन कंपनी लि. नई दिल्ली और अन्य एवं उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली के पंचाट (संदर्भ संख्या 07/2017) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.05.2019 को प्राप्त हुए थे।

[सं. एल-42025/03/2019-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 3rd June, 2019

S.O. 1003.— In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 07/2017) of the Central Government Industrial Tribunal-cum-Labour Court-2 New Delhi, as shown in the Annexure, in the Industrial Dispute between the employers in relation to The N.C.C Ltd. Nagarjun Construction Company Ltd. Delhi and Others, and their workmen which were received by the Central Government on 09.05.2019.

[No. L-42025/03/2019-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI**

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 07/17

Date of Passing Award- 26th March, 2019.

Between:

Shri Rajender Singh,
S/o Shri Har Singh,
R/o. B-6069-113/14, Sant Nagar, Buradi,
Kamal Pur Mazra Buradi,
Delhi- 110084.

....Workman

Through:- Samast Audhogik Shramik Vikas Union, (Reg.)
D-198/1, Gali No. 1, Radha Kishan Marg,
Swarup Nagar, Delhi- 110042.

Versus

1. M/s. N.C.C Ltd.
Nagarjun Construction Company Ltd.
2. N.B.C.C Kidwai Nagar, East Project Construction,
Of Social Structure Type-6, and 7 quarter, Kidwai Nagar,
New Delhi- 110023.

...Managements

Appearances:-

Shri Yashpal Singh, (Advocate)

For the Workman

None for the management, (Advocate)

For the Management

AWARD

This is an application filed by the workman invoking the jurisdiction of this tribunal under section 2-A of the ID Act 1947 (herein after referred to as The Act) seeking the relief of reinstatement to service with full back wages and other service benefits.

The averment of the claimant as per the claim statement is that he was working with Nagarjun Construction Company Pvt. Ltd. Since the year 2004 in the post of filed assistant on a monthly remuneration of Rs. 9701/- together with grade pay of 6300/-. In the month of April 2016, being in need of one week leave he had submitted leave application observing all the formalities. When his application was pending with the General Manager for Signature, he left for his village and returned on 26.04.2016. Though on 26.04.2016 and 27.04.2016 he reported for his duty, was not allowed to do so. On 28.04.2016 he was denied to put his signature in the attendance register. On his demand for the reason of such unfair labour practice no information was furnished. On the contrary when he was reported for work a notice was sent in his village address and with some ulterior intention, allegation was leveled for his unauthorized absence from duty. Ultimately his service was terminated and before termination no termination notice or retrenchment compensation was paid. Not only that, for March and April 2016 his salary was also held up by the management.

It is the further stand of the workman that when he was serving for the management the later was not paying him work linked incentive the facility of casual leave or salary in lieu of earned leave etc. The demand made by the workman in this regard, perhaps irritated the management leading to termination of the service. He has also pleaded that since the date of termination the workman has not been gainfully employed elsewhere.

Notices were sent to the management and on receipt of notice the management appeared through its administrative officer and authorized representative. Though several opportunities were given and cost was imposed the management failed to file written statement and hence proceeded ex-parte by order dated 15th May 2018.

Thus, in absence of the pleading of the management the points which emerged for consideration and adjudication are:

1. If the service of the workman was illegally terminated by the management.
2. If the workman is entitled to reinstatement with back wages.

POINT NO. 1

The workman examined himself as WW1 and also produced the documents which have been marked in a series of WW1/1 to WW1/4. In this sworn testimony the workman has stated that since the year 2004 he was working for the management as filed Assistant and appointment letter was given to him by the management on 23.09.2005. The copy of the appointment letter has been marked as WW1/4. This letter appears to have been issued to the workman by the Chief General Manager HRD of Nagarjun Construction Company Pvt. Ltd. dated 23.09.2005. The designation of the workman has been described therein as filed Assistant Grade-II. The recital of the Appointment letter shows that he was appointed for a probation period of 12 months from the date of joining and the management reserves the right of extending the period of probation if no order of confirmation is passed. Here in this case by filing the appointment letter the workman has stated that his service was confirmed after 12 months and no contrary evidence is available on record to discard the said assertion of the workman. Thus, the conclusion is that the workman was appointed as a field Assistant Grade-II in the office of the management and after successful completion of the Probation period he was confirmed to the post carrying the Monthly Salary as mentioned by the workman in the claim statement.

The workman has further pleaded that under genuine requirement he had proceeded for one week leave after submitting leave application. When he returned and reported for duty on 26.04.2016, the management did not allow him to sign the attendance register and by sending a termination notice in his village address which was never served on him, managed to terminate his service illegally. The workman has explained that he was often raising demand against the unfair Labour

practice which had irritated the management and prompted for termination of his service. He had served a demand notice on the management which remained unheard. The copy of that notice has been marked as WW1/2 and the postal receipt showing service of the same has been marked as WW1/3. On the basis of these documents the workman has pleaded that he was subjected to unfair labour practice.

The management though had appeared through its official, never participated in the proceeding. Thus, the statement and evidence of the workman remained uncontroverted. This undisputed and uncontroverted oral and documentary evidence adduced by the workman lead to a conclusion that he was an employee of the management and the latter had terminated his service illegally without following the statutory provision of section 25-F of the ID Act. This point No. 1 is accordingly answered in favour of the workman.

POINT NO. 2

In the claim petition the workman has prayed for reinstatement to service with back wages. Way Back in the year 1980 the Hon'ble Apex Court of India in the case of *surrender kumar Verma and Other vs. CGIT Delhi* had observed that

“Plain common sense dictates that the removal order terminating the service of the workman must ordinarily lead to the reinstatement in the service of the workman. It is as if the order was never been made and so it must ordinarily lead to back wages. But there may be exceptional circumstance which makes it impossible for the employer to direct reinstatement with full back wages.”

In such cases the Hon'ble Apex Court held that the appropriate order would be for payment of compensation in lieu of reinstatement. But in the case of **G.M ONGC Silchar vs. ONGC Contractual Worker Union reported in 2008 LLR 801** the Hon'ble Apex Court after giving due consideration to several observations in different pronouncement which suggest that a workman who was put in 240 days of work or a contractual worker is not entitled automatically to regularization and came to hold that, in appropriate cases regularization can be ordered.

In this case the workman has prayed for a relief of reinstatement to service on account of his illegal termination. The relationship between the workman and the management has already been established as the employee and employer. While adducing evidence the workman has successfully proved that his service was confirmed and he had an unblemished track record of service. In such a situation this tribunal feels it proper to direct that the workman be reinstated to service with back wages.

Though the workman has stated that he has not been gainfully employed since the date of termination, it is also evident on record that he has not rendered any service for the management during this intervening period. It is the rule of law that for no work done no remuneration is to be paid. Keeping that principle in view it is held that payment of 20% of the back wage to the workman from the date when his service was dispensed with by the management till reinstatement without interest will do justice in the circumstances. This point is accordingly answered. Hence, ordered.

ORDER

The claim petition be and the same is allowed. It is held that the termination of the workman by the management is illegal and he is entitled to reinstatement to service with management No.1 alongwith 20% of the back wages without interest from the date of termination till the date of reinstatement. The management No. 1 is further directed to reinstate the workman to service within 3 months from the date when this award becomes executable. The management shall also pay the back wages as directed within the said period of 3 months. On the event of nonpayment of the back wages accrued, the amount so accrued shall carry interest at the rate of 12% per annum from the date of notification of this award till the final payment is made. Copy be supplied to the parties and the record be consigned in the record room.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 3 जून, 2019

का.आ.1004.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स सीईओ, कैंटोनमेंट बोर्ड, देहरादून और अन्य एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली के पंचाट (संदर्भ संख्या 42/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.05.2019 को प्राप्त हुए थे।

[सं. एल-42025/03/2019-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 3rd June, 2019

S.O. 1004.— In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 42/2016) of the Central Government Industrial Tribunal-cum-Labour Court-2 New Delhi, as shown in the Annexure, in the Industrial Dispute between the employers in relation to The CEO, Cantonment Board, Dehradun and Others, and their workmen which were received by the Central Government on 16.05.1019.

[No. L-42025/03/2019-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present : Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 42/2016

Date of Passing Award- 25th April, 2019.

Between:

Km. Anjali Thakur,
D/o Shri L.R. Thakur,
Telpur, Shimla Bypass Road,
Mehuwala Mafi,
Dehradun-248171.

... Workman

Versus

The CEO,
Cantonment Board,
Clement Town,
Dehradun-248002.

... Management

Appearances:-

Shri Rajesh Sherawat, (Advocate)

For the Workman

None for the management, (Advocate)

For the Management

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Cantonment Board and its workman/claimant herein, under clause (d) of sub section (1) and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L- 13012/02/2015 (IR(DU) dated 05.05.2015 to this tribunal for adjudication to the following effect.

“Whether the management of Cantonment Board, Clement Town, Dehradun is justified in discontinuation of service of Kumara Anjali Thakur while persons junior to her were kept in service on similar footing? should she not be kept engaged till regular appointment is made, therefore under the given circumstances?

The Claimant filed her claim statement stating that pursuant to an advertisement dated 10.08.2011 published in daily newspaper Danik Jagran, she had submitted application for the post of Junior Clerk. Her application was considered and she was called for interview on 10.09.2012. Basing on for her performance, one engagement letter was issued to her on the next date i.e. on 11.09.2012 informing about her engagement as Computer Operator on contractual daily wage basis for a period of 87 days with a break of 5 days, extendable on satisfactory performance. He was offered the remuneration at the rate of Rs. 259/- per day. The claimant joined his duty on 11.09.12 and worked continuously till 30.03.2013. Though in the appointment letter it was mentioned that her engagement would be for a period of 87 days with a break of 5 days and extendable, no such break occurred and she worked continuously till 30.03.2013 when her service was terminated w.e.f. 01.04.13. A letter to that effect was served on him. After an artificial break of 4 days the claimant was again appointed in the same job on a daily wage of Rs. 365/-. However, this time no appointment letter was issued to her. She continued to work till 30.06.2014 when her job was finally terminated. During the period of employment though the

workman was paid remuneration, the management at the time of her termination neither served the notice of termination nor retrenchment compensation was paid to her in gross violation of the provisions of section 25-F of the ID Act. The claimant has further stated that the work done by her was against a permanent post and the work was perennial in nature. After her engagement the management had engaged other persons for the same nature of work. Though the engagement of the workman was brought to an end, the persons engaged after her engagement having lesser qualification than her are still working with the management which indicate that the management has the vacancy and requirement for the workman and the management violated the principle of last come first go, while terminating her service. Describing the same as unfair labour practice the workman made a complaint to the Labour Commissioner seeking redressal of her grievance. The conciliation proceeding taken up by the Labour Commissioner yield no result and the appropriate government referred the matter for adjudication by this Tribunal. The workman has prayed to set aside the order of termination passed by the management with additional prayer for reinstatement to the service with full back wages and other service benefits including the cost of the litigation.

The management filed written statement denying the claim of the workman. In the written statement the management has leveled allegation against the workman for suppression of material facts. It has been stated that the news paper advertisement referred to by the claimant was not meant for engagement of computer operators. There was a separate advertisement dated 31.08.2012 published in daily newspaper Danik Jagran and Amar Ujala dated 04.09.2012. In the said advertisement application were invited by the management for engagement of Two Computer Operators on casual basis on minimum wage for a period of 11 months with break of 5 days after completion of 87 days. There was a walk in interview conducted on 10.09.12 at Cantonment Board Office, Clement Town Dehradun. Pursuant there to the claimant was engaged w.e.f. 11.09.12 and conditional appointment letter was issued to her. The service of the claimant was terminated w.e.f. 01.04.13 and thereafter she was never appointed but allowed to work on daily wage basis till 30.05.2014. By an order dated 19.05.2014 this extension was made on the request of the claimant. The engagement of the claimant was purely on contractual basis and the engagement has not conferred any right of employment on the workman. The management has further stated that this claimant had filed WPC NO. 884/2014 before the Hon'ble High Court of Uttarakhand. The Hon'ble High Court while disposing the writ directed that the engagement of the applicant being purely on contractual basis she is not entitled to the relief sought for. However it was observed that the Cantonment Board at its discretion may consider engaging the petitioner till the post is filled up by way of regular process. The special appeal filed by the workman against that order also failed. While denying the allegation of the claimant that the principle of last come first go was not followed, the management has stated that the persons whom the claimant is referring to, were in fact initially appointed on contractual basis. But subsequently they were selected in the lawful process of selection pursuant to advertisement by the management and being selected got appointed. The present claimant did not participate in the process of regular appointment. Thereby the management has pleaded for dismissal of the claim.

On this rival pleading the following issues are framed for adjudication.

1. Whether the claim is not legally tenable in view of the various preliminary objection?
2. In terms of reference.

The workman examined herself as WW1 and filed certain documents which were marked in a series of WW1/1 to WW1/7. She was not cross examined by the management as the later by order dated 10.07.2018 was proceeded ex-parte. The documents filed by the workman include the advertisement made in the local news paper marked as Exhibit WW1/1, her appointment letter dated 11.09.2012 as WW1/2 the first termination letter dated 30.03.13 as WW1/3 the second termination letter dated 19.05.2014 marked as WW1/4 her representation copy of the bank passbook and the affidavit marked as WW1/5 WW1/6 WW1/7 respectively.

No oral evidence has been adduced by the management which was proceeded ex-parte. However alongwith the written statement the management had filed the photocopies of the advertisement dated 04.09.12 inviting application for the post of Computer Operator for a period of 11 months, the photocopy of the appointment letter termination letter and the orders passed by the Hon'ble High Court of Uttarakhand rejecting the plea taken by the workman with regard to his status on employment.

FINDINGS

ISSUE NO. 1

From the oral and documentary evidence adduced by the parties the undisputed facts are that the claimant was appointed for the management as a Computer Operator w.e.f. 11.09.2012 and had worked till 30.05.2014. Whereas the claimant has stated that she was appointed pursuant to an advertisement made in the local newspaper on 11.08.2011 the management disputed the same and stated that the advertisement referred to by the claimant was for Junior Clerk etc. There was a separate advertisement for walk in interview in order till fill up 2 Post of Computer Operator on causal basis. That advertisement was published on 04.09.12. The claimant has exhibited the photocopy of the advertisement as WW1/1 and on behalf of the management the photocopy of the advertisement has been filed. Though no oral evidence has been adduced by the management, the documents filed alongwith the written statement have not been disputed by the

claimant. On perusal of both the advertisement it is found that the advertisement dated 10.08.11 marked as WW1/1 was for the post of Junior Clerk, Safai Wala and Mali for filling up permanent vacancies on a definite scale of pay. There is no reference about computer operator as claimed by the present claimant. On the contrary the advertisement dated 04.09.12 referred to by the management was for walk in interview to fill up two post of computer operator on casual basis on minimum wage for a period of 11 months and initially for a period of 87 days with a break of 5 days. The terms and conditions mentioned in the advertisement dated 04.09.12 commensurate the terms and conditions mentioned in the appointment letter issued to the workman and filed by him as WW1/2. The oral evidence adduced by the workman that he was appointed against a regular vacancy doesn't sound convincing as against the documents filed by both the parties. Hence, it is held that the engagement of the workman as a computer operator with the management was purely on contractual basis on payment of minimum wage for a period of 11 months with a 5 days break on completion of 87 days. In addition to this it is pertinent to mention that the Hon'ble High Court of Uttarakhand while disposing WPC No. 884/2014 have clearly held that the engagement of the petitioner was purely on contractual basis and thereby never conferred any right of absorption against a permanent post.

The Ld. A/R for the workman during course of hearing submitted that the persons engaged later than the workman are still working for the management and thus, the management is guilty of violating the rule of last come first go. On the contrary the management in the written statement has admitted that the persons named by the workman were infact appointed as Computer Operators subsequent to the engagement of the claimant. It is also admitted that those persons are still working for the management but their engagement is no more contractual in nature since they went through the selection procedure of the management for their permanent absorption. The present claimant did not opt for the same and hence, her service was discontinued when regular appointment was made. It is true that the management has not adduced any evidence to prove that the said person have been appointed against regular vacancy. Following recruitment procedure and the claimant opted not to participate in that procedure. But at this point it is necessary to mention that the burden lies on the claimant to prove that when his service was terminated there were regular vacancies, and she was eligible for the post. The workman in her oral statement has emphasized about the perennial nature of the work she was engaged for and the continuing vacancies for the same with the management. This evidence of the workman has not been controverted by the management. Rather while filing the written statement the management has admitted about the continuity of service of 2 persons appointed later than the workman. The explanation offered is that they had gone through an eligibility test leading to their selection whereas the claimant/workman had opted out of the procedure. The procedure of law laid down in the Indian evidence Act requires the facts asserted to be proved and the pleading simpliciter cannot take the place of evidence. Hence, in this proceeding the management has failed to prove through evidence that 2 persons were appointed against permanent vacant posts though recruitment procedure, irrespective of the burden of proof. The pleading and evidence of the nowhere shows that her service was terminated on account of appointment of those two persons against permanent vacant post. Rather the evidence goes to show that the W.M and those two persons were working at the same time till termination on the claimant/workman which lead to a conclusion that there was vacancy when service of W.M was terminated.

In this case at the cost of repetition it is stated that the management though admitted about the vacancy in the post of computer operator and explained that two persons appointed later than the workman are continuing for their selection, there is no evidence on record to that effect. On the contrary the workman has challenged the stand of the management by saying that the work was perennial in nature and there are vacancies. This tribunal finds no reason of rejecting the oral testimony of the claimant in absence of any other evidence and comes to a conclusion that the management had vacancies for the post of computer operators when the service of the workman was terminated.

The next question which needs to be determined is- can a direction be issued to the management for absorbing the workman permanently against the vacant post as has been claimed by her. Alongwith the written statement the management has filed the certified copy of the orders passed by the Hon'ble High Court of Uttarakhand in WPC No. 884/2014 and Special Appeal No. 392/2014 wherein the Hon'ble High Court while rejecting the stand of the workman came to hold that the appointment of the workman was casual in nature and as such no relief can be granted as the post of computer operators being regular in nature should be filled up by way of a regular process of appointment.

In the case of **Secretary State of Karnataka vs. Uma Devi reported in (2006) 4 SCC Page 1** it has been held

“merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be absorbed in regular service or made permanent, merely on strength of such continuance, if original appointment was not made by following a due process of selection.”

In this case as admitted by the claimant there was only an interview and no due process of selection was followed. But she was allowed to work for a time beyond the term of his appointment. The case of Uma Devi referred supra came to be discussed in a later judgment by the Hon'ble Supreme Court i.e. in the case of Maharashtra SRTC vs. Casteribe Rajya Parivahan Karmchhari Sangathana (2009) 8 SCC Page 556. In that judgment the issue before the Hon'ble Supreme Court was with regard to the jurisdiction of the industrial court to give status wages and all other benefits of permanency to the workman who had been serving for years as cleaners in the corporation in temporary capacity. Relying upon Uma Devi a plea was raised that granting of permanent status to the casual workers/daily wagger was not sustainable in law. Repealing

the aforesaid argument the supreme court in Para No. 32 and 33 of the judgment of Maharashtra SRTC observed as under:-

- “32. The power given to the Industrial and Labour Courts under Section 30 is very wide and affirmative action mentioned therein is inclusive and exhaustive. Employing badlis, casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees is an unfair labour practice on the part of the employer under Item 6 of Schedule IV. Once such unfair labour practice on the part of the employer is established in the complaint, the Industrial and Labour Courts are empowered to issue preventive as well as positive direction to an erring employer.
- “33. The provisions of MRTU and PULP Act and the powers of Industrial Labour Courts provided therein were not at all under consideration in the case of Uma Devi¹. As a matter of fact, the issue like the present one pertaining to unfair labour practice was not at all referred, considered or decided in Umadevi¹. Unfair labour practice on the part of the employer in engaging employees as badlies, casuals or temporaries and to continue them as such for years with the object of depriving them of the status and privileges of permanent employees as provided in Item 6 of Schedule IV and the power of Industrial and Labour Courts under section 30 of the Act did not fall for adjudication or consideration before the constitution Bench”.

Again the Hon'ble Supreme Court in another case Hari Nandan Prasad vs. employer I/R to management of Food Corporation of India and another reported in AIR 2014 SC 1848, wherein the issue was as to whether the Labour Court Tribunal has the jurisdiction to order regularization of the workman was considered in the context of the provision of the Act and the decision of the constitution bench in the case of Uma Devi and the Hon'ble Court came to hold that the powers conferred upon the Industrial Tribunal/Labour Court under the ID Act are quite wide. The Act deals with industrial Disputes, provides for conciliation, adjudication, and settlements, and regulates the rights of the parties and the enforcement of the award and settlement. Not only that way back in the year 1950 in the case of Bharat Bank Limited vs. Employees of Bharat Bank reported in (1950) LLJ 921 The Hon'ble Supreme Court had observed:

“In settling the disputes between the employers and the workmen, the function of the Tribunal is not confined to administration of justice in accordance with law. It can confer rights and privileges on either party which it considers reasonable and proper, though they may not be within the terms of any existing agreement. It has not merely to interpret or give effect to the contractual rights and obligations of the parties. It can create new rights and obligations between them which it considers essential for keeping industrial peace.”

In the above said backdrop and on considering the different pronouncements of the Hon'ble Apex Court, while reverting to the facts of the present case, the grievance of the claimant is that she was appointed against a permanent vacancy on casual basis alongwith some others and during the course of her employment she had discharged her duties to the utmost satisfaction of the employer. The employer in order to deprive her of the right of permanency had made some artificial breaks. But she was allowed to work beyond the period of initial appointment and the other person engaged after her are still continuing which lead to a conclusion that the job requirement of computer operators is permanent in nature. Though the Hon'ble High Court of Utrakhnad have dismissed the plea of the claimant for absorption gave a liberty to her for approaching the Industrial Tribunal. Now before this tribunal the claimant has successfully proved that her engagement was purely on contractual basis but the engagement was against permanent vacancy and the persons appointed later than her are still continuing. Even though in the written statement the management took a plea that the said person were given regular appointment pursuant to a selection procedure there is no evidence to that effect. Hence, it is safely conclusion that the claimant/workman is a victim of unfair labour practice in the hands of the management and the management has failed to follow the principle of last come first go.

On harmonious reading of the two judgments of the Hon'ble High Court of Utrakhnad annexed alongwith the written statement of the management this tribunal is of the opinion that there are posts of computer operator vacant in the establishment of the management when the service of the workman was terminated, and the management adopted unfair labour practice by not following the Principle of last come, first go. Since the present workman had continued as a daily wage worker for no. of years which cannot be held as a back door entry for the interview conducted by the management before her engagement, it is concluded that the plea of the management that the workman was engaged on temporary basis and no direction for her regularization cannot be issued is held devoid of merit and therefore rejected.

The next question is if the workman meets other eligibility condition for absorption came up for consideration during adjudication. Admittedly the claimant petitioner has not attained the age of superannuation. Her qualification was considered at the time of her initial engagement and during this proceeding no objection in this regard was ever raised by the management. Hence it is concluded that claimant/workman possesses the requisite qualification and her retrenchment amounts to violation of section 25-G of the ID Act. No valid reason has been assigned by the management to justify its action in not following the principle of last come first go as mandated u/s 25-G of the Act. The plea that the persons employed later than the claimant/workman were allowed to continue pursuant to their regular selection is not accepted for want of evidence.

Reliance has been placed on behalf of the workman in the case of Mackinnon Mackenzie & Co. Ltd. vs. Mackinnon Employees Union reported in AIR 2015 SC 1373 and in the case of Workman of Sudder Workshop of Jorehut Tea Co.

Ltd. vs. Jorehut Tea Co. Ltd. reported in AIR 1980 SC 1454. In these two judgments the Hon'ble Supreme court have held that last come first go is not an inflexible rule and extraordinary situation may justify variation. In such a case the management has to assign the reason for departure from the rule. In this case no explanation has been offered by the management as to why the juniors were allowed to continue whereas the present workman being the senior was terminated.

Hence, for the foregoing reasons it is concluded that the claimant/workman was subjected to unfair labour practice by the management. There was a gross violation of the provision of Section 25-G of the ID Act. She having possessed the requisite qualification to work as a computer operator and there being the vacancy for the said post which is a post perennial in nature, this tribunal while following the judgment of the Apex Court in the case of Hari Nandan Prasad referred supra feels it proper to exercise its jurisdiction to order the regularization of the workman who was initially appointed as a casual worker and continued to work for more than 240 days in the preceding calendar year of her termination to the optimum satisfaction of the employer. The issue is accordingly answered in favour of the workman. Hence, ordered.

ORDER

The reference be and the same is answered affirmatively in favour of the workman. The decision of the management of cantonment board in discontinuing the service of the claimant/workman while retaining the persons junior to her is held to be illegal. It is directed that the claimant/workman shall be reinstated in the post where she was working at the time of her termination with immediate effect on the date when this award would become enforceable. It is further directed that the workman shall be paid the wage as per law from the date of her reinstatement. It is further directed that the management shall pay 30% of the back wage to the claimant/workman for the period between the date of termination and reinstatement without interest within 2 months from the date when the award would become enforceable. On the event of failure by the management to pay the amount within the time stipulated, the accrued amount shall carry interest at the rate of 12% from the date of accrual till the date of final payment. No order is passed as to cost. Copy be supplied to the parties and the record be consigned in the record room.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 3 जून, 2019

का.आ.1005.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स कमांडेंट, सशस्त्र बल मेडिकल कॉलेज, वनोवरी, पुणे एवं उनके कर्मचारी और अन्य के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, मुंबई के पंचाट (संदर्भ संख्या CGIT-2 /102 of 2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 14.05.2019 को प्राप्त हुए थे।

[सं. एल-14011/20/2014-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 3rd June, 2019

S.O.1005.— In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT-2/102 of 2014) of the Central Government Industrial Tribunal-cum-Labour Court-2 Mumbai, as shown in the Annexure, in the Industrial Dispute between the employers in relation to The Commandant, Armed Forced Medical College, Wanowari, Pune and Others, and their workmen which was received by the Central Government on 26.04.1019.

[No. L-14011/20/2014-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI****PRESENT : M. V. Deshpande** Presiding Officer**REFERENCE NO.CGIT-2/ 102 of 2014****EMPLOYERS IN RELATION TO THE MANAGEMENT OF ARMED FORCED MEDICAL COLLEGE**

The Commandant,
Armed Forced Medical College,
Civil Estt., Wanowari,
PUNE – 411 040.

AND**THEIR WORKMEN**

Shri Anil Babanrao Jadhav,
C/o. Poona Industrial Workers Union,
Near 197/A/1, Ramnagar Chowk,
Chakrapani Vasahat Road, Bhosari.
PUNE – 411 039.

APPEARANCES:

FOR THE EMPLOYER : Mr. Umesh Nabar, Advocate

FOR THE WORKMEN : Ms. Madhuri Chavan, Representative

Mumbai, dated the 5th April, 2019.

AWARD PART – I

1. This is reference made by the Central Government in exercise of powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide Government of India, Ministry of Labour & Employment, New Delhi vide its order No. L-14011/20/2014 – IR (DU) dated 02.12.2014. The terms of reference given in the schedule are as follows :

“Whether the action of the management of Armed Forces Medical College, Pune in removing the services of Shri Anil Babanrao Jadhav w.e.f. 25.03.2006 is legal and justified ? If not, to what relief the workman is entitled to ?”

2. After the receipt of the reference, both the parties were served with the notices. They appeared through their respective representatives.

3. The concerned workman has filed statement of claim Ex.5 and rejoinder Ex.14 contending therein that he was in the employment of first party in the capacity of watchman w.e.f. 9.11.94. He was permanent workman of first party. The first party by the charge sheet dt. 7.4.06 alleged that he remained absent for the period of 84 days in 3 spells without any intimation and thus he committed the misconduct in contravention of Rule 3 (1) (ii) of CCS Conduct rules, 1964. Dr. D.M. Athanikar, Chief Medical Officer was appointed as Enquiry Officer. During departmental proceedings he submitted that he was sick and down with severe pain in his stomach and therefore he could not attend the duty. E.O., however, submitted his report on 26.8.06 to the first party. The first party based on enquiry report by his order dt. 22.7.06 imposed upon the second party the major punishment of removal from service which shall not be qualification for future employment under the government. The second party made representations to the authorities for setting aside removal order. The Asst. Administrative Officer of the first party closed the case advising the second party to approach the concerned authority for redressal of grievance. Second party approached the office of Labour Commissioner [State Govt.] and thereafter the office of RLC Pune. The conciliation proceedings conducted by RLC [C], Pune who forwarded his report dt. 18.3.13 to the Central Govt. and in turn the Central Govt. by order dt. 2.12.14 has referred the industrial dispute for adjudication to this tribunal.

4. The first party management resisted claim by filing written statement Ex.8 contending therein that the Armed Forces Medical College, Pune is a category – A estt. of Govt. of India, Ministry of Defence under Director General, Armed Forces Medical services which carries out teaching, research and training to combatants and other staff and performing sovereign function of union of India. Essence of government service is the sense of discipline to which all the

government employees are subject & privilege to which they in general are entitled. These two aspects are fully covered by service rules i.e. Central Civil Services Conduct Rules and Central Civil Rules [CCA] Rules, 1965. As such AFMC, Pune is not an industry nor the concerned workman is a workman as defined under I.D. Act, 1947. AFC, Pune is discharging sovereign function of government and there is no relationship between employee & employer. Employees of AFMC are not workers and also AFMC does not fall under the definition of the industry. Activities of the government which can be properly described are regal or sovereign activities which are outside the scope of section 2 (j) of I.D. Act. Hence it does not come under the purview of I.D. Act, 1947.

5. It is then contended by the first party that applicant / concerned workman had been showing utter disregard towards the services and had been a habitual absentee from the beginning of his service as an employee of this college. He has criminal record and has been in prison for 17 days under IPC section 498A and 306. He was placed under suspension on 12.6.97 which was revoked on 11.9.03 due to his acquittal of the charge punishable u/s. 498A, 306 of IPC.

6. It is then contended that after due process of departmental enquiry conducted against him he was found guilty of charges framed against him and was awarded major penalty of removal from services which shall not be disqualification for future employment under the government vide order dt. 27.7.06. But then after lapse of 6 years he raised the present dispute and therefore it is necessary to frame and decide the preliminary issues on the point of jurisdiction to entertain the reference.

7. Following issues are framed at Ex.15. Issue No.1 & 2 are treated as preliminary issues. Hence I reproduce the Issue No.1 & 2 along with my findings thereon for the reasons to follow:

Sr. No.	Issue	Findings
1	Whether Armed Forces Medical College is an 'industry' as defined under section 2 (j) of the Industrial Disputes Act ?	Yes
2.	Whether the second party (Mr. Anil Babanrao Jadhav) is 'workman' under I.D. Act ?	Yes

Reasons

Issue No.1 & 2.

8. Learned Counsel for the first party submitted that all the services of AFMC are governed by the Central Civil Services Conduct Rules. Submission is to the effect that as per article 311 of Constitution of India, no person who is member of civil services of the union or All India services or a civil service of a State or holds civil post under the union or state shall be dismissed or removed by the authority subordinate to that by which he was appointed. In view of that administrative tribunal has to entertain the dispute u/s. 14 of Administrative Tribunal Act and therefore law relating to Central Administrative Tribunal is applicable since AFMC is not an industry. The question therefore comes for consideration is, whether AFMC / first party is an industry or not ?

9. The term 'industry' is defined u/s. 2 (j) of I.D. Act, 1947 as under:

“(j) “Industry” means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or a vocation of workmen.”

10. The test and guidelines for inclusion & exclusion of the term 'industry' has been indicated in the decision in case of Bangalore Water supply & Sewerage Board V/s. A. Rajappa & Ors. – 1978 (2) – SCC – 213. The Hon'ble Apex Court has held

- (a) Where (i) systematic activity, (ii) organized by co-operation between employer and employee, (the direct and substantial element is chimerical) (iii) for the production and / or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to, celestial bliss e.g. making, on a large scale, Prasad or food), prima facie, there is an 'industry' in that enterprise.
- (b) Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint private or other sector.
- (c) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.
- (d) If the Organisation is a trade or business, it does not cease to, be one because of philanthropy animating the undertaking.”

11. In view of this legal position, it is made clear that there is no mention of any profit motive and the term 'employer' necessarily postulates employees without whom there can be no employers. It has been observed that one of the test evolved is an undertaking is industry if it is analogist to trade or business. The term 'analogist to trade or

business' could reasonably mean only activity which results in goods made or manufactured or services rendered which are capable of being converted into salable ones.

12. As regards the sovereign and legal functions, it has been observed that the term is misfit in a republic where a citizen shares a political sovereignty in which he has a legal share, however, small in as much as he exercise the right to vote. Therefore only those services which are governed by the separate rules and constitutional provisions such as article 310 & 311 should strictly speaking be excluded from the sphere of industry by necessary implication.

13. As regards the educational institutions, it has been observed that if triple tests of systematic activity co-ordination between employer & employee and production of goods and services were to be applied, a university, a college, a research institute or teaching institute will be an industry.

14. Learned Counsel for the concerned workman seeks to rely on the decision in case of Umayammal V/s. State of Kerala – I – LLJ – 267 to submit that an estt. can be taken out of a pale of industry only if it exercises inalienable government functions. Even though sovereign functions of the state cannot be included in the industry if there are industrial units severable from essential functions and passes an entity of their own. It may be plausible to hold that the employees of those units are workmen and those undertakings are industries.

15. Here in the instant case, it is contention of the first party that AFMC, Pune carries out teaching, research & training to combatants and other staff and therefore it is not an industry. It has not been shown that the first party estt. is exercising inalienable government functions only. But then as a matter of fact, it can be said that the functions of the institution is organized by the coordination between employer & employee. This being the education institution, the nature of activity is functional and decisive test which was shown is that the nature of activity is education which is a service to the community. Hence AFMC is an industry.

16. As per the appointment order, the second party was appointed as a Watchman in the estt. of the first party. Considering the nature of work of the concerned workman as per the appointment order, the second party workman is a workman as defined u/s. 2 (s) of the Act as he is not subject to Air force Act, Army Act, Navy Act nor he is employed in the police service or as a officer or other employee of the prison or he is not an employee in any managerial administrative capacity. He is not employed in supervisory capacity too. He was appointed as a Watchman and considering the nature of work as a Watchman, it can be said that the second party workman is a workman under the I.D. Act.

17. Considering the legal position, the nature and activities of the AFMC first party the nature of appointment of second party workman, the nature of the work of the second party workman in his capacity as workman, I find that AFMC Medical College is an industry as defined u/s. 2 (j) of I.D. Act. I also find that the second party workman is a workman under I.D. Act. Hence above preliminary issues are answered accordingly as indicated against each of them in terms of above observations. Hence order.

ORDER

1. First party AFMC Medical College is an industry as defined u/s. 2 (j) of I.D. Act.
2. Second party workman is a workman under I.D. Act.

Date: 05.04.2019

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 3 जून, 2019

का.आ.1006.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स प्रबंधन, कर्नाटक एंटीबायोटिक्स एंड फार्मास्यूटिकल्स लिमिटेड, कोलकाता और अन्य एवं उनके कर्मचारी के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ संख्या 02/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 22.04.2019 को प्राप्त हुए थे।

[सं. एल-42011/219/2015-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 3rd June, 2019

S.O.1006.— In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 02/2016) of the Central Government Industrial Tribunal-cum-Labour Court Kolkata, as shown in the Annexure, in the Industrial Dispute between the employers in relation to The Management of Karnataka Antibiotics and Pharmaceuticals Ltd, Kolkata and Others, and their workmen which were received by the Central Government on 22.05.1019.

[No. L-42011/219/2015-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 02 of 2016

Parties: Employers in relation to the management of Karnataka Antibiotics & Pharmaceuticals Ltd.

AND

Their workmen

Present: Justice Ravindra Nath Mishra, Presiding Officer

Appearance:

On behalf of the : None
Management

On behalf of the : None
Workmen

Dated: 12th April, 2019

Industry : Pharmaceuticals

AWARD

By Order No.L-42011/219/2015-IR(DU) dated 04.01.2016 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) referred the following dispute to this Tribunal for adjudication:

“Whether the action of the management of M/s Karnataka Antibiotics and Pharmaceuticals Ltd. (A Govt. of India Enterprise) in rejecting the 6-Point Charter of Demands raised by West Bengal Medical & Sales Representatives’ Union (Affiliated to CITU) as detailed in their letter No. GS/41/2015 dated 24.02.2015 in violation of Govt. Circulars issued in this regard is legal and/or justified? If not, what relief the workmen are entitled to?”

3. When the case is taken up for hearing on 03.04.2019, none appeared for the parties concerned, though both the parties earlier entered appearance by their respective learned counsel. It transpires from record that though this reference is pending in this Tribunal since 13.01.2016 and inspite of all the opportunities, neither the union has not filed its statement of claim, nor the management has filed its written statement to proceed further with the case.

4. On consideration of the facts and circumstances of the case, it appears that the union has no grievance at present in respect of the 6-points charter of demands as mentioned in the order of reference. Therefore, there exists no dispute for adjudication.

5. Therefore, the reference is disposed of accordingly.

JUSTICE RAVINDRA NATH MISHRA, Presiding Officer

Dated, Kolkata,

The 12th April, 2019

नई दिल्ली, 3 जून, 2019

का.आ.1007.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स प्रबंधन ऑल इंडिया रेडियो, पटना और अन्य एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, धनबाद के पंचाट (संदर्भ संख्या 100/1998) को प्रकाशित करती है जो केन्द्रीय सरकार को 08.04.2019 को प्राप्त हुए थे।

[सं. एल-42011/123/1998-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 3rd June, 2019

S.O.1007.— In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 100/1998) of the Central Government Industrial Tribunal-cum-Labour Court, Dhanbad, as shown in the Annexure, in the Industrial Dispute between the employers in relation to The Management of All India Radio, Patna and Others, and their workmen which were received by the Central Government on 08.04.2019.

[No. L-42011/123/1998-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act. 1947.

Reference: No. 100/1998

Employer in relation to the management of All India Radio

AND

Their workman

Present: Shri D.K.Singh Presiding Officer

Appearances:

For the Employers : None

For the workman. : None

State : Jharkhand.

Industry-Coal

Dated- 28/03/2019

AWARD

By order No. L-42012/123/1998-IR (DU) dated 30/11/1998, the central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the management of commercial Broadcasting services, All India Radio, Patna in terminating the service of Shri Ajay Kumar Singh, Casual announcer’s is legal & justified? If not to what relief the workman is entitled to?”

2. After receipt of the reference, both parties were noticed. The workmen appeared for certain dates, but subsequently left appearing before this Tribunal. More over one of the notices sent to workman is returned back. Case is pending since long.. It appears that the workman has lost his interest to resolve the matter. Hence No Dispute Award is passed. Communicate.

D. K. SINGH, Presiding Officer

नई दिल्ली, 3 जून, 2019

का.आ.1008.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स प्रबंध निदेशक, बॉमी जियो इंजीनियरिंग, मायलापुर, चेन्नई और अन्य एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, एर्नाकुलम के पंचाट (संदर्भ सं. 24/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.04.2019 को प्राप्त हुए थे।

[सं. एल-42025/03/2019-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 3rd June, 2019

S.O.1008.— In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 24/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Ernakulam, as shown in the Annexure, in the Industrial Dispute between the employers in relation to The Managing Director, Bumi Geo Engineering, Mylapor, Chennai and Others, and their workmen which were received by the Central Government on 09.04.2019.

[No. L-42025/03/2019-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present : Shri.V. Vijaya Kumar LLM, Presiding Officer

(Monday the 22nd day of March, 2019)

ID 24/2015

- | | | |
|------------|---|---|
| Workman | : | Shri Prakash. S,
S/o Sankaran, Prakashini Bhavan,
Iykkadu P.O., Kodumon,
Pathanamthitta District, Kerala. |
| Management | : | By Adv. K. Shaj
1) The Managing Director,
Bumi Geo Engineering,
Registered Office NO.85/1,
NAC Towers, 4 th Floor,
Dr. Radhakrishna Salai,
Mylapor, Chennai.

2) The Project Manager,
Bumi Geo Engineering,
Kochi Metro Site, Edappally,
Kochi. |

By Adv. Sojan James & Adv. Jolly John

- 3) The Managing Director,
Delhi Metro Rail Corporation Ltd.,
Kochi, GCDA Complex,
Ernakulam South Railway Station,
Kochi – 682 016.

By M/s B.S. Krishna Associates.

- 4) The Project Manager,
L&T, KC-03, Kochi,
Edappally Package,
Edappally, Kochi.

This case coming up for final hearing on 28.02.2019 and this Tribunal-cum-Labour Court on 22.03.2019 passed the following:

AWARD

This is an application filed by the workman under Section 2A(2) of the Industrial Disputes Act, 1947.

2. The allegation in the petition in brief is that the petitioner joined the 1st opposite party as Welder on 06.01.2009. The 1st opposite party is engaged as Sub-Contractor of the 4th opposite party. On 09.12.2013 the 1st opposite party wanted the petitioner-workman to sign final settlement receipt for Rs.48257.46. The Petitioner refused to sign the same. The petitioner was directed not to report for duty from 10.12.2013. Hence the petitioner seeks to declare his retrenchment illegal and direct the 1st opposite party to reinstate the petitioner with full back wages and all other benefits.

3. The 1st, 2nd and 3rd Management entered appearance. The 4th Management remained exparte. According to the 1st & 2nd Management the claim under S.2(A) of the Industrial Dispute Act is not maintainable as the petitioner has not complied with the mandatory requirements. Further he will not come under the provision of the Industrial Disputes Act as he did not have continuous service to entitle him to claim the benefits under the Act.

4. The case was posted for evidence of the workman from 05.12.2016. There was no representation for the workman on 12.11.2018 and 07.01.2019. A final chance was given to the workman to adduce evidence on 28.02.2019. There was no representation for the workman on 28.02.2019 also and the workman is called absent and set exparte.

In view of the above the petition is dismissed for non-prosecution, and an award is passed dismissing the claim of the Workman.

The award will come into force one month after publication in the official Gazette.

Dictated to the Assistant, transcribed and typed by him and passed by me on this 22nd day of March, 2019.

V. VIJAYA KUMAR, Presiding Officer

APPENDIX – Nil

नई दिल्ली, 3 जून, 2019

का.आ.1009.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स अध्यक्ष, केन्द्रीय माध्यमिक शिक्षा बोर्ड, प्रीत विहार, दिल्ली और अन्य एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली के पंचाट (संदर्भ संख्या 23/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 16.05.2019 को प्राप्त हुए थे।

[सं. एल-42011/12/2016-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 3rd June, 2019

S.O.1009.— In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 23/2016) of the Central Government Industrial Tribunal-cum-Labour Court-2 New Delhi, as shown in the Annexure, in the Industrial Dispute between the employers in relation to The Chairman, Central Board of Secondary Education, Preet Vihar, Delhi and Others, and their workmen which were received by the Central Government on 16.05.1019.

[No. L-42011/12/2016-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI****Present:** Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour

Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 23/2016**Date of Passing Award- 26th April, 2019.****Between:**

Shri Darshan Singh & 17 Ors.
(As per Annexure Attached)
Through, General Secretary,
Delhi Offices And Establishment Employees Union,
13-A, Rouse Avenue, ITO,
New Delhi- 110002.

... Workmen

Versus

1. The Chairman,
Central Board of Secondary Education,
Siksha Kendra, 2-Community Centre,
Preet Vihar, Delhi- 110092.
2. The Managing Director,
New Grow Software Solutions Pvt. Ltd.
DLF Tower, 341, Moti Nagar, 3rd Floor,
New Delhi- 110008.
3. The Managing Director,
M/s. Neha Aviation Management Pvt. Ltd.
RZA-83, Road No. 4, Gali No. 6,
Mahipalpur Extension,
New Delhi- 110037.

...Managements

Appearances:-

Shri B. K. Prasad, Advocate

: For the Workman

None for the management, Advocate

: For the Management

AWARD

The Government of India in Ministry Of Labour has referred the present dispute existing between employer i.e. the management Central Board of Secondary Education, and its workmen/claimants herein, under clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter no. L-42011/12/2016 (IR (DU) dated 30.03.2016 to this tribunal for adjudication to the following effect.

“Whether the arrangement between Central Board of Secondary Education and New Grow Software Solutions (P) Ltd., & Neha Aviation Management (P) Ltd. is sham and camouflage? If so, its effect. 2. Whether the workmen are entitled to regularization from their date of initial appointment? 3. Whether the workmen entitled to receive their wages at par with other regular employees of this category?”

In the claim statement it has been asserted that the workmen 45 in number (as per list enclosed) were engaged by the management No. 1 i.e. CBSE as MTS/Computer Assistant/Electrician on the date mentioned against their names and continued to work under the direct control and supervision of management No. 1. Though they were appointed as temporary and casual workers their services were allowed to continue by the management No. 1 with artificial break of 2 or 3 days at an interval of 3 months. The work tenure of the workmen for the management No. 1 varies from 10 years to 1 year. All of them were appointed against permanent post and out of the 45 workmen one has completed 10 years, three completed 9 years, two completed 8 years, two completed 6 years, two completed 5 years, twelve completed 4 years, two completed 3 years, Eleven completed 2 years, and 9 completed one year of service with the management No.1.

The further contention of the workmen is that in the year 2010 management No. 1 had notified its vacancies in the website and the workmen in response to the same submitted applications. They were asked to appear in a test and interview conducted by the management. Being found suitable, they were recruited on contractual basis with specified terms and conditions. At that time they were assured by the management to be regularized in due course. When the workmen were discharging their duties with all sincerity with management No. 1 in the year 2012 the management No. 1 entered into a contract with management No. 2 for a period of 6 months. The contract was discontinued w.e.f. 30.06.2012. Again in August 2014 management No. 1 entered into a fresh contract with management No. 2 and since then made an arrangement for payment of wages to the workmen through management No. 2. During this period the workmen were not getting their wages regularly. The management No. 1 manipulated the situation to show the workmen as the employees of management No. 2 though the management No. 1 is barred u/s 10 of the Contract Labour (Regulation and Abolition) Act 1970 to engage contract Labour against the jobs of perennial in nature. The contract between the management No. 1 and 2 was sham and camouflage and designed to deprive the workmen of their legal rights. The workmen then apprised their union and through the Union served a demand notice on the management. The management though received the notice did not take action compelling the workmen to approach the appropriate government. The conciliation proceeding held by the Labour Commissioner failed and during the pendency of the Industrial Dispute before the Labour Commissioner, the management No. 1 terminated the service of some of the workmen on 27.06.15 and some others on 01.07.15. A reference being made by the Appropriate Government they filed a claim statement praying for a declaration that the arrangement between management No. 1 and 2 is sham and camouflage, the workmen are entitled to regularization of their services from the date of their initial appointment and for a direction that workmen be paid pay at par with the regular employees from the date of regularization, management No. 1 be directed to pay the arrear wages and differential wages after regularization.

Management No. 2 appeared and filed written statement stating therein that there was an agreement between management No. 1 and management No. 2 for providing manpower for administrative and technical cadre. Accordingly the management No. 2 has provided manpower to management No. 1 and paying them salary to be reimbursed by management No. 1. This management has taken a stand that there is no relationship between it and the workmen as an employer and employee and thus, the proceeding is not maintainable against management No. 2. It has denied the allegation that the contract between management No. 1 and 2 is sham and camouflage.

Management No. 1 has also filed written statement challenging the maintainability of the proceeding on the ground that CBSE is an autonomous body governed by its own Rule. The workmen were initially engaged as contract workers through one Agency named M/s Neha Aviation Management Pvt. Ltd. on contractual basis and were paid remuneration through Cheque. They were never appointed on regular basis and their appointments having not been done following the rule and procedure of CBSE for recruitment, their service cannot be regularized in view of the decision of the Hon'ble Supreme Court of India passed by the constitution bench in the case of **Secretary State of Karnataka and Others vs. Uma Devi**. While denying their claim of appointment against permanent vacant sanctioned post the answering management took a stand that they being contractual casual workers not appointed through a proper selection procedure recognized by the relevant rule and procedure, cannot invoke the jurisdiction of this tribunal for their regularization of service. While denying the cause of action this management has stated that there is no employer employee relationship between the management No. 1 and the workmen and their plea for regularization need to be dismissed.

On this rival pleadings following points emerged for consideration during adjudication.

1. If the proceeding is maintainable.
2. If the claimants/workmen are entitled to the relief of regularization of their service from the date of their initial appointment.
3. If the workmen on the event of regularization of their service are entitled to full pay at par with the regular employees of the same cadre and arrear of the differential salary.

Though both management No. 1 and 2 had initially participated in the proceeding by filing written statement, on a later date management No. 2 did not choose to participate at all. Though management No. 1 i.e. CBSE was participating in the proceeding through its A/R till the end, opted not to adduce any oral or documentary evidence. The workmen examined one of the claimants as WW1 and proved certain documents marked in a series of WW1/1 to WW1/5. This witness was not cross-examined by any of the management and thus, his evidence remained almost unchallenged.

Point No.1

In the written statement filed, both the managements have stated that the workmen have no cause of action for initiating this proceeding and thus, the same is not maintainable. During the proceeding no serious challenge was raised in this regard by the managements. The pleading and the evidence adduced on the behalf of the management clearly indicate that the workmen were demanding regularization of their services and after proper espouser they had served a demand notice on the management. The copy of the demand notice and its postal receipt has been filed and exhibited during the

course of adjudication. The oral evidence adduced by the witness on behalf of the workmen further reveals that the management No.1 did not take any action on the said demand notice as a result of which a claim was made before the labour commissioner. The evidence further reveals that before the Labour commissioner a conciliation proceeding was initiated but the same could not yield any result and the commissioner reported the same to the appropriate government which, in turn made the reference. Hence, in view of the pleading and evidence it is held that the workmen have a cause of action to raise this dispute. This point is accordingly answered.

POINT No. 2

In the claim statement the workmen have alleged that their appointment was made initially on a contractual basis for a period of 6 months. But the management No. 1 allowed them to work continuously years after years on daily wage basis. In order to deprive them of their legitimate right their appointment were renewed with artificial break. During the period of engagement they were working under the control and supervision of the management No. 1 who was also paying them salary directly. In the year 2012 suddenly management No. 1 made some arrangement with management No. 2 and tried to place the service of the claimant/workmen under the disposal of the management No. 2. However that arrangement remained in force for a period of 6 months and discontinued thereafter. In august 2014 management No.1 again entered into an arrangement with management No. 2 and since then routed the salaries of the workmen through management No. 2 as if they are the employees of management No. 2. The management No. 1 was regularly deducting the EPF and ESI dues from the earned salary of the workmen. Thus, the workmen have taken the stand that they were never the employees of management No.2.

The further stand of the workmen is that in the year 2010 CBSE the management No. 1 had notified to fillup its vacancies in the official website. In response to the same the workmen made application for different post. Eligibility test and interview was conducted by management No.1 for selection and the workmen were issued appointment letter containing terms and conditions of the employment. The appointment letter of some of the workmen have been filed and exhibited on the behalf of the claimants.

The management No. 2 as stated earlier has not adduced any evidence. It has only admitted in the written statement that as per the arrangement between management No. 1 and 2 he had provided manpower for administrative and technical post. He was paying remuneration to those persons in advance and getting reimbursement from Management No. 1. In the written statement the management No. 2 has not admitted or denied specifically about the claimants/workmen of this proceeding. However it has clearly denied to have any kind of relationship with the claimant/workmen of this proceeding.

Management No.1 i.e. CBSE has clearly denied about its relationship as employer with the claimants. Its specific stand is that they were engaged through the contractor i.e. the management No. 2 which has been denied by the later. On the contrary the workmen have pleaded that the arrangement between the management No. 1 and Management No. 2 was sham and camouflage designed to deprive them of their legitimate right. It is the further stand of the workmen that they were working under the supervision and control of management No. 1 having no direct or indirect relationship with the management No.2. The pleadings of the parties have made it necessary to examine if there exist any employer employee relationship between management No.1 and the claimants.

In the case of *Steel Authority of India vs. National Union Waterfront Worker Union* reported in (2001) 7SCC Page 1, the Hon'ble Apex Court have prescribed for the effective control test to ascertain about the relationship of the workman with the management or the contractor. Not only that in the case of **Chintaman Rao (1958(II)LLJ252)** the Apex court ruled that the concept of employment involves 3 ingredients (i)Employer (ii) Employee (iii) Contract of Employment. The employer is one who employees or engages the service of other person. The employee is one who works for another for hire. The employment is the contract of service between the employer and employee, where under the employee agrees to serve the employer subject to his control and supervision. In the case of **Food Corporation of India reported in (1985(ii) LLJ4)** the Hon'ble Apex Court pronounced that the contract of employment always discloses a relationship of command and obedience between them. Where a contractor employs a workman to do the work which he contracted with a third person to accomplish, the workman of the contractor would not become more than the workman of the third person. Not only that the manner of work is to be distinguished from the type of work to be performed. In the case of **Ram Singh and Others vs. Union Territory Chandigarh and Others (2004)1 SCC 126** the Hon'ble Apex Court have elaborately discussed the factors to be considered for determining the employer employee relationship and the factors include control, integration power of appointment, liability to pay, liability to organize work etc. Thus, from the above analysis of the Principle of Law, it emerges that the effective control is a test to determine the employer employee relationship between the parties.

In this proceeding the workmen have all along maintained that they were working under the supervision and control of management No.1 having no relationship with management No.2. The later in the written statement has also clarified that except paying salary and getting reimbursement of the same for the workmen from the management No.1 it had no more relationship with the workmen. It is a decided principle of law that employer and employee relationship is a question of

fact and the burden lies on him who asserts existence of the same. In this case the workmen have taken a stand and successfully established their relationship with management No.1 as its employee. Hence, now it is to be seen if the demand for regularization of service by the workmen is justified.

In the written statement the management No.1 have referred to the judgment the Constitution Bench of the Hon'ble Supreme Court passed in the case of **Secretary State of Karnatak and Others vs. Uma devi reported in (2006) 4 SCC Page1** and contended that the workmen of this proceeding since appointed for a fixed term on casual basis their claim for regularization is not maintainable. It has further been pleaded by management No. 1 that CBSE is an autonomous body having its own rules and procedure of recruitment. The workmen were never appointed following the said procedure and rule and their appointment were never against regular vacancy. Be it stated here that the management No.1 has not adduced any oral or documentary evidence to fortify the stand taken in this regard in the WS. In the case of Uma Devi referred supra the Hon'ble Supreme Court have held that the appointment of contractual employee and regularization of their services is not an automatic process and when a person was given appointment skipping the prescribed rule through a back door, cannot claim absorption or regularization against a sanctioned vacant post. This issue came up for consideration before Hon'ble Apex Court again in the case of Hari Nandan Prasad vs. Employer I/R to management of Food Corporation of India and another reported in AIR 2014 SC 1848, wherein the issue, whether the Labour Court Tribunal has the jurisdiction to order regularization of the workmen was considered in the context of the provision of the Act and the decision of the constitution bench in the case of Uma Devi. The Hon'ble Apex Court came to hold that the powers conferred upon the Industrial Tribunal/Labour Court under the ID Act are quite wide. The Act deals with industrial Disputes, provides for conciliation, adjudication, and settlements, and regulates the rights of the parties and the enforcement of the award and settlement. Not only that way back in the year 1950 in the case of Bharat Bank Limited vs. Employees of Bharat Bank reported in (1950) LLJ 921 The Hon'ble Supreme Court had observed:

“In settling the disputes between the employers and the workmen, the function of the Tribunal is not confined to administration of justice in accordance with law. It can confer rights and privileges on either party which it considers reasonable and proper, though they may not be within the terms of any existing agreement. It has not merely to interpret or give effect to the contractual rights and obligations of the parties. It can create new rights and obligations between them which it considers essential for keeping industrial peace.”

In the above said backdrop and considering the different pronouncements on the Hon'ble Apex Court while reverting to the facts of the present case the grievance of the claimants is that they were appointed against the post the nature of work performed is perennial and those are permanent vacancies. Though they were appointed on casual basis are discharging their duties with utmost satisfaction of the employer i.e. Management No.1 but the management No.1 by entering into a camouflage with management No.2 is trying to deprive them of their legitimate rights by causing artificial break in their service. These aspects as pleaded by the workmen have been denied by the management No.1 in the WS only. On behalf of the workmen the appointment letter of some of the claimants, their salary bills etc have been filed. These documents have not been controverted by the management and go to show that the claimant/workmen were issued appointment letter after their selection through one walk-in-interview process. Majority of the workmen are still in service except the few whose service has been terminated on two dates i.e. on 27.06.2015 and 01.07.2015 when a conciliation proceeding between the parties was in progress before the Labour Commissioner. Moreover the document which are in the nature of monthly sanctioned order of the salary by the designated authorities of the management No.1 clearly establishes that the present workmen are working under the effective control and supervision of management No.1 and at no point of time their service was discontinued nor placed under the disposal of management No.2.

During course of argument Ld. Counsel for the workmen drew the attention of this tribunal to the case of **J and K Bank Limited vs. CGIT reported in 2018 Lab. I.C. Page 2970** passed by the Hon'ble High Court of Jammu and Kashmir in which the case of Hari Nandan Prasad and Uma Devi refereed supra was elaborately discussed with regard to the effect and implication of the constitution bench decision of the Apex Court in the case of Uma Devi. In the said judgment reference has been made to the case of **Maharashtra SRTC. Casteribe Rajya Parivahan Karmchari Sangathan (2009)8 SCC 556** in which the issue before the Hon'ble Supreme Court was with regard to the jurisdiction of the Industrial court to give status wages and all other benefits of permanency to the workmen who had been serving for years as cleaners in the corporation in temporary capacity. Relying upon Uma Devi, plea was raised on behalf of the corporation that granting permanent status to the casual workers/daily wager was not sustainable in law. Repealing the said argument the Hon'ble Supreme court in Para 32 and 33 of the judgment have observed:-

“32. The power given to the Industrial and Labour Courts under Section 30 is very wide and affirmative action mentioned therein is inclusive and exhaustive. Employing badlis, casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees is an unfair labour practice on the part of the employer under Item 6 of Schedule IV. Once such unfair labour practice on the part of the employer is established in the complaint, the Industrial and Labour Courts are empowered to issue preventive as well as positive direction to an erring employer.

“33. The provisions of MRTU and PULP Act and the powers of Industrial Labour Courts provided therein were not at all under consideration in the case of Uma Devi1. As a matter of fact, the issue like the present one pertaining to unfair labour practice was not at all referred, considered or decided in Umadevi1. Unfair labour practice on the part of the employer in engaging employees as badlies, casuals or temporaries and to continue them as such for years with the object of depriving them of the status and privileges of permanent employees as provided in Item 6 of Schedule IV and the power of Industrial and Labour Courts under section 30 of the Act did not fall for adjudication or consideration before the constitution Bench”.

Thus, on a harmonious reading of the different pronouncements of the Hon’ble Apex Court this tribunal in absence of evidence to contrary comes to hold that the workmen were selected through a selection procedure may be through a walk-in-interview as decided by the management and issued appointment letter which was renewed from time to time for the perennial nature of work and during the course of their employment they are under the effective control and supervision of management No.1. Except pleading in the written statement that the workmen were never appointed against permanent vacancy no other evidence has been adduced by the mangementno.1. Since the workmen are working continuously and their nature of work is such that at no point of time they were disengaged and in the process they have completed work for 240 days or more in a calendar year, they are held entitled to regularization of their services from the date of their initial appointment with current and back wages at par with the regular employee of similar cadre. This point is accordingly answered in favour of the workmen.

POINT NO. 3

In view of the finding of point no.2 this tribunal is of the opinion that the workmen/claimants are entitled to regularization of their services in the post they were appointed from the date of their initial appointment as mentioned in the list appended to this award back wages in the appropriate scale of the said post against which they were appointed. This point is accordingly answered. Hence, ordered.

ORDER

The workmen as per the list appended to this award are held entitled to regularization of their services in the post they were appointed from the date of their initial appointment as mentioned in the list against their names and they are also held entitled to the back wages in the appropriate scale of the said post against which they were appointed. The management no.1 is directed to complete the exercise of the regularization within 3 months from the date when this award would become enforceable and pay the financial dues of the workmen which has accrued in their favour without interest within 4 months from the date of notification of the award failing which the amount so accrued shall carry interest at the rate of 12% per annum from the date when the award becomes enforceable and till the payment is finally made. Copy be supplied to the parties and the record be consigned in the record room.

The reference is accordingly answered.

LIST OF WORKMEN

Sr. No.	Name & Father/husband's Name	Date of joining/year of joining	Designation
1.	Shri Darshan Singh Mehra S/o Shri. Teeka Singh Mehra	25.03.2010	Comp. Asstt.
2.	Neeta Singh S/O Shri. Basant Singh	01.11.2011	Comp. Asstt.
3.	Chitra W/o Shri Prakash Kanti	14.06.2012	Comp. Asstt.
4.	Divya W/o Shri Sandeep Sharma	06.08.2012	Comp. Asstt.
5.	Deepa Patwal S/o Shri. Dev Singh Patwal	01.10.2012	Comp. Asstt.
6.	Aarti S/o Shri Rajat Ram	27.11.2012	Telecaller
7.	Manisha S/o Shri. Santosh Pal	18.12.2012	Comp. Asstt.
8.	Indra Negi S/o Shri. Partap Singh Negi	2012	Comp. Asstt.

9.	Nand Kishor S/o Shri Sajiwan Maurya	2012	Comp. Asstt.
10.	Umer alam S/o Shri Badre alam	06.02.2013	Comp. Asstt.
11.	Meenakshi Singh S/o Gopal Singh	02.04.2013	Comp. Asstt.
12.	Parmita S/o Prabhu dyal	01.01.2013	Comp. Asstt.
13.	Mahender Singh S/o Shri. Munshi Singh	03.07.2005	Mali
14.	Jitender S/o Shri. Tej Singh	23.04.2014	MTS
15.	Reena Khan S/o Late. Rafiq ahemed	30.04.2014	Multi Task Asstt.
16.	Manoj Kumar S/o Shri. Digambar Singh	23.06.2012	Lift Operator
17.	Inderjeet Singh S/o Shri. Digambar Singh	10.06.2013	Lift Operator
18.	Grace Singh D/o Madan Pal Singh	01.04.2014	Steno

PRANITA MOHANTY, Presiding Officer

26th April, 2019

नई दिल्ली, 3 जून, 2019

का.आ.1010.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स कमिशनर, एमसीडी (दक्षिण), नई दिल्ली और अन्य एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली के पंचाट (संदर्भ सं. 93/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 17.05.2019 को प्राप्त हुए थे।

[सं. एल-42011/27/2013-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 3rd June, 2019

S.O.1010.— In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 93/2013) of the Central Government Industrial Tribunal-cum-Labour Court-2 New Delhi, as shown in the Annexure, in the Industrial Dispute between the employers in relation to The Commissioner, MCD (South), New Delhi and Others, and their workmen which were received by the Central Government on 17.05.2019.

[No. L-42011/27/2013-ID (DU)]

V. K. THAKUR, Section Officer

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI**

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 93/2013**Date of Passing Award- 25th April, 2019.****Between:**

Sh. Mohan Lal,
S/o Shri Kishori Lal,
Through MCD General Mazdoor Union,
Room No. 95, Barracks No. 1/10, Jam Nagar House,
Shahjahan Road,
New Delhi.

... Workman

Versus

The Commissioner,
MCD (South), 9th Floor,
Civic Centre, Minto Road,
New Delhi- 02.

... Management

Appearances:-

Shri B. K. Prasad, (Advocate) : For the Workman

Shri Ankit Jain, (Advocate) : For the Management

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of MCD (South) 9th Floor, and its workman/claimant herein, under clause (d) of sub section (1) and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L- 42011/27/2013 (IR(DU) dated 10.07.2013 to this tribunal for adjudication to the following effect.

“Whether the action of the management of MCD Delhi in not granting pay scale of Rs. 3050-4590 w.e.f. 12.02.1999 and revised from time to time alongwith all consequential benefits to workman Shril Mohan Lal S/o Late Shri Kishori Lal officiating Choudhary w.e.f. 01.01.1998 is fair and justified? What relief the workman is entitled to?”

The claimant filed the statement wherein he has alleged that initially he was appointed as a Gardner and was allotted to a work as Choudhary w.e.f. 12.02.1999 by the competent authority of the Horticulture Department of the management. He was posted at Green Park under South Zone of the management and was asked to report to the Deputy Director Horticulture. Though he was asked to work as Choudhary but paid salary in the lower pay scale of Mali i.e. 2550-3200 revised from time to time. His entitlement of the higher scale of the Choudhary in the pay scale of 3050-4590 was denied despite demand. The action of the management is alleged to be illegal and unjustified and amounts to unfair labour practice.

The other contention of the workman is that the Hon'ble High Court of Delhi in the case of Jai Chand vs. Municipal Corporation of Delhi in CW No. 6514 of 2001 and the Division Bench of the Delhi High Court in the case of MCD Vs. Sultan Singh and Others WPC No. 7947 of 2010 have disapproved the non payment of wages to the Malis working in the post of Choudhary. After the said judgments the Hon'ble High Court the Municipal Corporation Delhi (Horticulture Department) issued an order on 04.03.2005 directing implementation of the judgment of the case of Sultan Singh. Accordingly many persons in similarly placed position of the workman were granted the pay scale of Choudhary from the date they were asked to perform the duty in the said higher post. But the management challenged the order of the Division Bench of the High Court of Delhi passed in the case of Sultan Singh before the Hon'ble Supreme Court by filing special leave to appeal in the year 2011. But the said SLP was dismissed as withdrawn on 09.04.2012. After dismissal of the special leave petition the management did not comply the order of Hon'ble Delhi High Court for payment of higher post salary to the Malis discharging the duty of Garden Choudhary. The judgment of the Hon'ble Delhi High Court in the case of Sultan Singh has been filed as Annexure -E. It is the further case of the workman that for

promotion to the post of Garden Choudhary there is no requirement for additional qualification. However, at the time of his initial joining he had studied up to class 8th and after he was directed to work in the post of Garden Choudhary took permission from the authority to appear in class 10th Examination. In the year 2008 he successfully completed class 10 examination and on his request appropriate entry in this regard was made in a service. His further contention is that despite request when higher pay scale was denied he raised an Industrial Dispute before the Labour Commissioner who took up conciliation and on failure of conciliation referred the matter to this tribunal for adjudication.

Management objected to the claim of the workman on the ground of maintainability being barred by the limitation. It is the stand of the management that as per his own contention the workman was asked to work in the post of Garden Choudhary in the year 1999 but came up with this dispute after 14 years in the year 2013. While placing reliance in the case of **Nedungadi Bank Limited Vs. K.P. Madhavankutty and Ors. (2002(2) SC 4)**, and **State Co-op Land Development Bank vs. Neelam (2005)5 SC 91**) the management has pleaded for dismissal of the claim petition on the ground of delay. It is the further contention of the management that the workman was engaged in the post of Mali on daily wage basis and later on regularized on the same post in the pay scale of 750-940 (pre-revised + usual allowance) the post of Garden Choudhary is being filled up by way of promotion from among the Malis who qualify in a trade test conducted by the department. The workman of this case had not qualified in the mandatory trade test. Further the management has denied the claim of the workman that he was performing the duties of Garden Choudhary w.e.f. 12.02.1999. Taking a stand that no such order was ever passed by the management, it has stated that for the subsequent qualification acquired by the workman in the year 2008 the management in due course considering such qualification, gave promotion to the workman to the post of Garden Choudhary by office order dated 04.03.14. The other stand of the management is that the proceeding is not maintainable not being properly espoused by the Registered Union. Accordingly the management prayed that the claim of the workman is liable to be dismissed.

On this rival pleading this tribunal framed following issues for adjudication.

1. Whether the action of the management of MCD Delhi in not granting pay scale of Rs. 3050-4590 w.e.f. 12.02.1999 and revised from time to time alongwith all consequential benefits to workman Sh. Mohan Lal S/o Late Shri Kishori Lal Officiating Choudhary w.e.f. 01.01.1998 is fair & justified? If so, its effect?
2. Whether Present dispute has been properly espoused by a recognized union? If so, its effect?
3. Whether claim of workman is maintainable? If so, its effect?
4. To what relief the workman is entitled to and from which date?

The workman examined himself as WW1 and testified in the line of the claim statement. He also proved the documents marked as WW1/1 which is the list of the working Choudhary w.e.f. 12.02.1999. During cross-examination he denied to the suggestion of the management that he was never working in the capacity of Garden Choudhary. He was confronted with 2 documents marked as WW1/M1 and WW1/M2, the applications submitted by him to the management and WW1/M3 and WW1/M4 and WW/M5, WW1/M6, WW1/M7, which are the office order dated 04.03.14 in which the workman was given regular promotion, the recruitment regulation for the post of Mali and Garden Choudhary his service book etc. WW2 is another witness examined on the behalf of the workman who is the President of the MCD General Mazdoor Union. This witness has been examined to prove the espousal of the Industrial Dispute before raising a claim. On behalf of the management one of its Assistant Director has been examined as MW1. He has stated that the workman was never asked by the management to perform the duty of the Garden Choudhary and in the year 1999 he was not possessing the requisite qualification for the post of Garden Choudhary. In the year 2008 he acquired the qualification and thereafter made representation to the management for getting the salary of Garden Choudhary w.e.f. 1999. The copies of the application submitted by the workman have been exhibited as MW1/1 MW1/2 and MW1/3 respectively. In due course he was given promotion and promotional scale w.e.f. 04.03.14.

FINDINGS

ISSUE No. 2 and 3

These two issues have been taken up for the purpose of discussion together being interrelated. The management has challenged in the WS about the maintainability on two grounds. The first is there was demand notice served on the management before the Industrial Dispute was raised amounting to want of espousal. The other point is the dispute raised after 14 years is barred by limitation. While disputing the authority of MCD General Mazdoor Union to raise the dispute not being recognized union of the management, it was argued that on the ground of non espousal the proceeding is liable to be dismissed.

It is not required under law that only a recognized Union can raise the dispute. An individual or group of individual can very well raise an Industrial Dispute to redress their grievance. The Hon'ble Supreme Court of India in the case of *State of Bihar vs. Kripa Shankar Jaiswal* reported in AIR 1961(2) SC Page 1 have held.

For a dispute to constitute an Industrial Dispute, it is not a requisite condition that it should be sponsored by a recognized Union or that all the workman of an industrial establishment should be parties to it. A settlement arrived at in course of conciliation proceeding falls within section 18 of ID Act and as such binds all the workman though an unregistered Union and only some of the workman may have raised the dispute.

Thus, the argument of the management that the dispute was not sponsored or espoused by substantial no. of workman is not accepted since the law is well settled that non espousal of the case by the Union would not deprive the workman of the relief to which he is otherwise entitled under Law. Not only that in the case of Associates Cement company limited reported in AIR 1960 SC Page 777 the Hon'ble Supreme Court have held.

We have already noticed that an Industrial Dispute can be raised by a group of workman or by union even though neither of them represent the majority of the workman concerned. In other words, the majority rule on which the appellants construction of section 19(6) is based is inapplicable in the matter of reference under section 10 of the Act. Even a minority group of the workmen can make a demand and thereby raise an Industrial Dispute which in a proper case would be referred for adjudication.”

In view of the ratio of the judgments discussed above this tribunal is of the view that maintainability of the proceeding cannot be questioned on account of non espousal. Moreover by examining WW2 the workman has adduced some evidence regarding the espousal of the grievance through the Union.

The other challenge of the management on the maintainability is the delay in bringing the Industrial Dispute. On behalf of the management reliance has been placed in the cases of **Nedungadi Bank Limited Vs. K.P. Madhavankutty and Ors. (2002(2) SC 4)**, and **State Co-op Land Development Bank vs. Neelam (2005)5 SC 91** to argue that the dispute relates to the year 1999 and has been raised in the year of 2013. Describing the same to be a stale dispute, the management argued for dismissal on the ground of inordinate delay in approaching the tribunal. In the case of Raghuvir vs. General Manager (2014) LAB I.C 4266 it has been held by the Hon'ble Supreme Court that the Appropriate Government can refer an industrial dispute at any time and the provision of limitation act doesn't apply. There is a clear observation in the above judgment that the industrial dispute is to be decided by the Industrial Tribunal or Labour court on merit irrespective of pleading on limitation. Hence it is held that the law decided in the case of Nedungadi Bank Limited and State Co-op Land development referred, supra do not hold good in the field being earlier decisions. The workman cannot be faulted for the delay in approaching the tribunal. Accordingly both the issues are answered in favour of the workman.

ISSUE No.1

This is the most important issue for adjudication in this proceeding. For adjudication of this issue the evidence adduced by the workman, the documents filed by the management as well as the workman are relevant and material. It is clear from the pleadings of the parties that initially the workman herein was appointed as Mali on daily wage basis and later on he was regularized in the said post carrying the pay scale of 750-940 (pre revised) alongwith usual allowances. The management has admitted this in the written statement. The workman in his oral statement and pleading has stated that he is performing the duty of the Garden Choudhary w.e.f 12.02.1999. The management has denied the same. During cross-examination the witness examined on behalf of the management has expressed his ignorance about the nature of the work discharged by the workman in the year 1999. In such circumstance this tribunal finds no reason of rejecting the oral evidence of the workman that he was working as Choudhary since 12.02.1999. The workman in the oral statement has named some other employees who have been granted pay scale of Choudhary by the management of MCD following the judgment passed by the Hon'ble High Court of Delhi in the case of Sultan Singh referred supra as they were doing the work of Choudhary prior to their regular promotion for the said post. The document filed by the management as Annexure-C and D are the judgments of the Hon'ble High Court of Delhi in the case of MCD vs. Mahipal and. MCD vs. Sultan Singh. The document dated 04.03.2005 Exhibited by the workman as Exhibited WW2/2 is the office order of the management wherein the MCD implemented the order for granting officiating pay to one Jai Chand after the opinion of the Chief Law Officer and Commissioner of MCD. There in another document dated 12.08.2004 marked as WW1/1 on behalf of the workman which is a list prepared by MCD in respect of the Garden Choudhary and as per the said list the present claimant Sh. Mohan Lal was at serial No. 7. There is also another document which is in the nature of office order of the director of Horticulture South Delhi Municipal Corporation wherein by order dated 04.06.13 the director had instruction to all the Deputy Director to verify and examine the claim of the applicants regarding discharge of duty as Garden Choudhary and the claim if found to be genuine, wages equal to the pay to the post be given to them. Thus, on a conjoint reading of the office order dated 04.06.2013 of the Director Horticulture, the list of the Garden Choudharies marked as WW1/1 and the judgment of the Hon'ble High Court passed in the case of Sultan Singh referred supra the one and only conclusion is that the present claimant was working as the Garden Choudahry since 12.02.1999 and the other persons in similar footing with him have been granted the pay scale of Choudharies pursuant to the order passed by the Hon'ble High Court of Delhi.

Though the management has taken a stand in its reply that the workman here is not entitled to promotion to the post of Choudhary inasmuch as he has not qualified the requisite Test conducted by the department, no document to that effect has been filed. Hence, this stand of the management is held devoid of merit inasmuch as similarly situated other workers performing the duty of Choudhary i.e. Acting Choudhary have been granted pay scale of Garden Choudhary after judgment dated 27.07.2011 passed by the Hon'ble High Court of Delhi in the case of MCD vs. Sultan Singh as well as MCD vs. Mahipal. Operating portion of the judgment in Sultan Singh (Supra) of the Hon'ble Division Bench is as under:

“28. Considering the entire facts and circumstances it is apparent that the claim of the respondents have always been that they should be paid the difference in pay of Mali/Chowkidar and the Garden Choudhary as they were made to work on the post of Garden Choudhary whereas the petitioner had first denied that they worked as Garden Choudharies, then took the plea that the Assistant Director (Horticulture) was not competent to ask the respondents to work as Garden Choudharies and that the respondents cannot be appointed to the post of Garden Choudharies in accordance with the recruitment rules. There is no doubt that respondents are not claiming appointment to the post of Garden Choudharies on account of having worked on ad-hoc basis on the post of Garden Choudhary contrary to rules or that some of them not having the requisite qualifications are entitled to relaxation.

29. In the entirety of facts and circumstances therefore, the learned Counsel for the petitioner has failed to make out any such grounds which will impel this court to exercise its jurisdiction under Article 226 of the constitution to set aside the orders of the Tribunal dated 29th January, 2010 and 7th October, 2010 as no illegality or un-sustainability or perversity in the order of the Tribunal has been made out.

30. The writ petition is, therefore, dismissed. Parties are left to bear their own cost.”

Hence, for the foregoing discussion, it is necessary to mention here that even if the workman herein, was not a party to the case of Sultan Singh referred above, the judgment rendered by the Hon'ble court in the said case is binding on the management and the management is required to implement the same by letter and spirit and all similarly situated workman are required to be accorded the benefit of the said judgment of the Hon'ble High court which has become final on account of the special Leave petition dismissed by the Hon'ble Supreme Court. The question of delay in bringing the dispute has already been answered and at the cost of repetition it is stated again that the management has not laid any evidence to prove the same.

The law is well settled that if a person is working in a higher post, on ad-hoc or temporary basis he is entitled to salary/wage of the said higher post unless rules or regulations specifically provide otherwise. In the case of **State of U.P. Vs. Arvind Kumar Srivastav reported in (2015)1 SCC 347** the Hon'ble Supreme Court of India while considering the question akin to the present dispute have held:-

“The moot question which requires determination is as to whether in the given case, approach of the Tribunal and the High Court was correct in extending the benefit of earlier judgment of the Tribunal, which had attained finality as it was affirmed till Supreme Court. The legal principles that can be culled from the judgments cited both by the appellants as well as the respondents can be summed up as under:

- (1) Normal rule is that when a particular set of employees is given relief by the court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This Principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the court earlier, they are not to be treated differently.
- (2) However, this principle is subject to well recognized exception in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.
- (3) However, this exception may not apply in those cases where the judgment pronounced by the court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the court or not. With such pronouncements the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularization and the like (see *K.C. Sharma & Ors. Vs. Union of India (Supra)*). On the other hand, if the judgment of the court was in personam

holding that benefit of the said judgment shall accrue to the parties before the court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.

Hence, considering the pronouncements of the Apex Court and the discussion made in the preceding paragraph, this tribunal is of the view that the claimant being in the similar footing with that of the workman in the case of Sultan Singh referred supra is also entitled to the salary of the Garden Chaudhary the post in which he was officiating since 12.02.1999 and entitled to the scale provided for that post from that date i.e. the scale 3050-4590 revised from time to time. The management has adopted unfair labour practice by denying the said pay scale alongwith all consequential benefits to the workman Mohan Lal. This issue is accordingly answered in favour of the workman. Hence, ordered.

ORDER

The reference be and the same is answered in favour of the workman and it is directed that the workman is entitled to the pay scale of Garden Chaudhary i.e. Rs 3050-4590, revised from time to time w.e.f. 12.02.1999 along with all consequential benefits. The management is thus directed to revise the current pay of the workman accordingly and pay the arrear to him accruing between 12.02.1999 to 04.03.2014 when he was promoted as Garden Chaudhary within 3 months from the date when this award would become enforceable, failing which the amount accrued shall carry interest at the rate of 12% per annum from the date of accrual till the final payment is made.

Let this award be sent to the Appropriate Government as required u/s 17 of the ID Act for publication. Consign the record according to law.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 3 जून, 2019

का.आ.1011.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स मुख्य महाप्रबंधक, भारत संचार निगम लिमिटेड, देहरादून और अन्य एवं उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली के पंचाट (संदर्भ संख्या 18/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 17.05.2019 को प्राप्त हुए थे।

[सं. एल-40012/25/2012-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 3rd June, 2019

S.O. 1011.— In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 18/2013) of the Central Government Industrial Tribunal-cum-Labour Court-2 New Delhi, as shown in the Annexure, in the Industrial Dispute between the employers in relation to The Chief General Manager, Bharat Sanchar Nigam Limited, Dehradun and Others, and their workmen which were received by the Central Government on 17.05.2019.

[No. L-40012/25/2012-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI**

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 18/2013

Date of Passing Award- 25th April, 2019

Between:

Shri Narender Singh & Ors.,
S/o Shri Govind Singh,
R/o Village-Jeevangarh,
Ward No. 9, P.O. Dakpathar,
Distt. Dehradun, Uttarakhand.

... Workmen

Versus

1. Chief General Manager,
Bharat Sanchar Nigam Limited,
Windlass Shopping Complex,
Rajpur Road, Dehradun- 248001.

... Management

2. The General Manager,
Bharat Sanchar Nigam Limited,
E-10, Exchange, Patel Nagar,
Dehradun.

3. Sub Divisional Manager,
Bharat Sanchar Nigam Limited,
Vikas Nagar, Dehradun.

Appearances:-

Shri Rajesh Ranjan, (Advocate)

...For the Workman

None for the management, (Advocate)

...For the Management

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Bharat Sanchar Nigam Limited, and its workman/claimant herein, under clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L- 40011/25/2012 - IR(DU) dated 05.03.2013 to this tribunal for adjudication to the following effect.

“Whether the action of the management of BSNL, Vikas Nagar, Dehradun by not regularizing 18 workmen (list enclosed) is unjustified? If so, what relief the workmen are entitled to?”

Though the reference received from the Government had enclosed a list of 18 workmen, only 6 of them, (list appended to this award) filed the claim statement and contested the Industrial Dispute.

The claimants in the claim statement have stated that they had been working with the management as a daily wage/casual worker since the year 2000 till their illegal termination on 23.03.2012. Initially the remuneration paid to them was Rs. 100/- per day and for the accumulated amount for a month they were being paid under payment voucher. Subsequently they were getting approximately Rs 2500/- per month which was much less than the minimum wage prescribed by the government from time to time. Their last drawn salary was approximately 2500/- per month. The workmen had worked for the management for more than 12 years diligently leaving no scope for complaint. During this period despite their demand no appointment letter was issued to them though they had completed work for more than 240/- days in each calendar year. Not only that during the course of their employment they were being asked to work for more than 7/8 hours a day. The provisions of PF leave salary etc were never made available to them. When the management did not consider their request to regularize them in the post they were working, a complaint was made by them before the Central

Labour Commissioner in the year 2012 praying regularization of their job and payment of Appropriate salary. The conciliation proceeding failed. With a view to take revenge the management without issuing any show-cause notice and conducting domestic inquiry terminated the services of the present workmen w.e.f. 23.03.2012 for the failure of the conciliation the Appropriate Government referred the matter to this tribunal for adjudication. The further stand of the workmen is that since, the date of termination they are unemployed having no other source of income. Hence, they have prayed for an award to be passed holding the termination of their service by the management to be illegal with a further direction to the management for reinstating them in service with full back wage since the date of termination and till the date of reinstatement. The further prayer is that their service with the management be regularized.

The management BSNL filed the written statement rebutting the stand of the workmen. While denying the employer employee relationship between them, the management has pleaded that the proceeding is not maintainable as allegation doesn't amount to an industrial dispute. The specific stand of the management is that the workmen were working for a BSNL through a contractor who has been awarded with a contract to do certain work for the management. The said contractor is a necessary party and for his non-joinder the proceeding is liable to be dismissed. In the WS it has also been mentioned that the workmen were never engaged by the management either as daily wager or casual workers. All the claims advanced by the workmen are illegal and not tenable in the eye of law. While denying the alleged termination of service, the stand of the management is that when the workmen were not employed by the management the question of their termination doesn't arise. On the same ground the management has denied the necessity for serving any termination notice on the workmen. Thereby the management has prayed for dismissal of the proceeding.

On the rival pleadings the following issues were framed for adjudication.

1. Whether the action of the management of BSNL, Vikas Nagar, Dehradun by not regularizing 18 workmen (list enclosed) is unjustified? If so its effect?
2. Whether relationship of employer an employee exists between respondent and workman? If so its effect?
3. To what relief the workmen is entitled to?

During hearing though the management had filed written statement and participated to a particular extent after 3rd August 2017 the A/R for the management did not attend the court on all adjourned dates as a result of which the claimants were allowed on the subsequent dates for examination of remaining witnesses of the claimants. On 15th Jan 2019 evidence on the behalf of the claimants were closed. On that day the case was adjourned for argument since on the preceding dates the management or it's A/R were appearing. The argument was heard on 25.04.2019.

During the hearing, on behalf of the workmen some of the claimants testified as WW1 and WW2. Both the witnesses were cross-examined at length the Ld. A/R for the management. The witnesses proved certain documents marked in a series of WW1/1 to WW1/11 these documents include payment receipts issued on different dates to some of the claimants and the letter correspondence between the workmen and management, the complaints made by the workmen collectively on different dates to the management ventilating their grievance and the attendance register etc.

On behalf of the management no oral or documentary evidence were adduced.

FINDINGS

ISSUE NO. 2

This issue has been taken up for consideration at the first instance since it will have a considerable influence on the decision of other issues. The workmen have claimed that since the year 2000 they had been working for the management continuously till the date of their illegal termination made on 23.03.2012. The oral evidence adduced by WW1 and WW2 fully support the claim statement in this regard. To render documentary evidence in support of the same on the behalf of the workmen the attendance register marked as WW1/10 and WW1/11 have been filed. These are the photocopies of the register in which the names of 18 workmen who are the claimants of the present proceeding clearly appears and marks their presence on different months and dates starting from 2004 to 2011. On behalf of the workmen the Ld. A/R during course of argument submitted that during examination of the witnesses the photocopy of the attendance register was filed and exhibited. The Ld. A/R for the management did not object to the admissibility of the same. He also argued that the management is the custodian of all the registers and when the original was not filed by the management to dispute the authenticity of the photocopies the one and only conclusion is that the said copies are authentic documents.

The law of evidence provides that any document proposed to be proved should be produced in original as primary evidence and the secondary evidence is permissible only when the original is proved to be lost or not within the reach of the party relying on the same or the same cannot be produced without inordinate delay and difficulty. In this case admittedly the claimants are the poor workmen who have no link with the management on account of their alleged retrenchment. In such a situation it cannot be insisted upon them to produce the original document from the custodian of the management. The management in this case was participating in the proceeding when the document that is the

photocopy of the attendance register was exhibited. Hence, this tribunal feels it proper to accept the photocopies of the documents on secondary evidence.

The workmen have asserted that they were working directly under the management having no intermediary contractor. Though in the written statement a reference has been made by the management about the contractor through whom these workmen were engaged, there is absolutely no evidence adduced by the management to prove the identity of the contractor or the nexus between the contractor and the workmen. Pleading however elaborate may be cannot take the place evidence which is required to be proved by evidence. In this proceeding in absence of evidence it cannot be held that the workmen were the employees of the contractor and working for the management. The stand of the workmen also finds support from the documents which are the payment voucher, issued by the Junior Telecom officer of BSNL to the different workmen as remuneration for the work done by them. Some of the vouchers marked in a series of exhibit WW1/1 have been issued by the SDE phones Vikas Nagar Dehradun. They have also filed the photocopy of the complaint register for the relevant period showing resolution of the complaints of the customers by the workmen from time to time. Thus, all these documents filed on behalf of the workmen taken along with the attendance register when taken into consideration clearly lead to a conclusion that during the relevant period between 2000 to 2012 the workmen were the employees of the management and their exist a relationship of employer and employee between them.

In this regard reliance has been placed on behalf of the workmen in the case of **BSNL Vs. Bhurumal decided by the Hon'ble Supreme Court of India in Civil appeal No. 10957 of 2013** where in an award passed by the CGIT wherein a diary containing the details of the job undertaken by the workmen on different dates were accepted as evidence for determining the employer employee relationship. The tribunal on the basis of the said documents have come to hold that the entries in the diary legally prove that the workmen were working under the direct and administrative control of the management and thus, they were the employees of the management. The Hon'ble Apex Court while analyzing the reasons assigned by the Presiding Officer of CGIT came to hold that there is no reason to disbelieve the diaries maintained during ordinary course of business and thereby discarded by the argument of BSNL management that the diary being a self serving document cannot be relied as evidence. In this case in the similar manner the workmen have relied upon the entries made in a diary showing the work and job discharged by them. This tribunal finds no reason of discarding the said diary. On the contrary it is held that the entries in the said diary were made during an undisputed point of time and clearly proves how during the relevant time period i.e. between 2000 to 2012, these workmen were working under the effective administrative control of the management which gives rise to a presumption of employer employee relationship which has not been rebutted by the management in this case. The plea of the management that the claimants were the employees of the contractor in absence of proof is rejected. This issue is accordingly answered in favour of the workmen.

ISSUE Nos. 1 and 3

The grievance of the claimants is that they had worked for the management for 12 years without being paid the minimum wage. When they raised a genuine and lawful demand before the Labour Commissioner the management got annoyed and terminated their service w.e.f. 23.03.2012. The management had denied the alleged termination on the ground that when there was no employer employee relationship the question of termination doesn't arise. Both the witnesses examined as WW1 and WW2 in their oral statement have stated that the management orally terminated their service and at the time of termination neither any termination notice, notice pay, or termination compensation was paid. Not only that no show-cause notice was served nor any Domestic Enquiry was conducted against them before termination. Both the witnesses were cross- examined at length by the Ld. A/R for the management. But nothing substantial has been elicited to discredit their testimony.

Now it is to be examined if the said act of termination and not regularizing them in service by the management is illegal. Be it stated here that the evidence of the claimants have not been controverted by the management. While answering issue No.2 it has already been held that the workmen were working for the management and discharging their duty for the period between 2000 to 2012. In the case of **ONGC vs. ONGC contractual workers union** reported in 2008 LLR page 801 it has been held that in order to ascertain the status of the workmen the period of work rendered by him is also taken into consideration. In this case the workmen have stated that they were employees of the management and later illegally terminated their service.

The law is well settled that when the workman successfully establishes his relationship as a n employee of the management it is to be seen if the termination was made illegally. Reference can be made to section 25-F of the Act 1947 which precisely speaks that no workmen employed in any industry who has been in continuous service for not less than 1 year shall be retrenched unless and until the said workmen has been give one month notice in writing, or notice pay or retrenchment compensation. In this case in the written statement the management has taken a plea that no notice was required to be served since there was no employer employee relationship. This gives an impression that no notice was served. Thereby the management has admitted non compliance of the mandatory provision of section 25-F of the ID act. This act itself makes the order of termination illegal and not sustainable in the eye of law. Thus, the moot question which remains to be replied is what would be the relief that can be granted to the workmen once his termination is held to be illegal.

Way back in the year 1980 the Hon'ble Apex Court of India in the case of *Surendra Kumar Verma and Others vs. CGIT Delhi* had observed that

“Plain commonsense dictates that the removal order terminating the service of the workman must ordinarily lead to the reinstatement in the service of the workman. It is as if the order was never been made and so it must ordinarily lead to back wages. But there may be exceptional circumstance which makes it impossible for the employer to direct reinstatement with full back wages.”

In such cases the Hon'ble Apex Court held that the appropriate order would be for payment of compensation in lieu of reinstatement. But in the case of **G.M ONGC Silchar vs. ONGC Contractual Worker Union reported in 2008 LLR 801** the Hon'ble Apex Court after giving due consideration to several observations in different pronouncement which suggest that a workman who was put in 240 days of work or a contractual worker is not entitled automatically to be regularized, came to hold that in appropriate cases regularization can be ordered.

Here is a case where the workmen have prayed for a relief of reinstatement simpliciter by the management No.1. They have further stated that the work done by them were perennial in nature. While adducing evidence the workmen have successfully proved that for the relevant calendar year of their engagement they have completed 240 days of work and there by duly discharged the burden put on them to prove that during a calendar year they had discharged work for 240 days more (**2006 SCC page 967, municipal counsel Sujanpur vs. Surinder Kumar relied**)

A question may come up regarding the regularization of casual or contractual employees against regular vacancies in view of the restriction imposed in the case of **Secretary of State Karnatak vs. Uma Devi reported in 2006) 4 SCC Page1**. In the said judgment the constitution bench of the Hon'ble Supreme Court have held that the appointment of the contractual employees and their regularization in service is not an automatic process but the case of Uma Devi referred supra came to be discussed in a later judgment by the Hon'ble Supreme Court in the case of **Maharashtra SRTC vs. Casteribe Rajya Parivahan Karmchari Sangathana (2009) 8 SCC Page 556**. In that judgment the issue before the Hon'ble Supreme Court was with regard to the jurisdiction of the industrial court to give status wages and all other benefits of permanency to the workman who had been serving for years as cleaners in the corporation in temporary capacity. Relying upon Uma Devi a plea was raised that granting of permanent status to the casual workers/daily wagger was not sustainable in law. Repealing the aforesaid argument the supreme court in Para No. 32 and 33 of the judgment of Maharashtra SRTC observed as under:-

“32. The power given to the Industrial and Labour Courts under Section 30 is very wide and affirmative action mentioned therein is inclusive and exhaustive. Employing badlis, casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees is an unfair labour practice on the part of the employer under Item 6 of Schedule IV. Once such unfair labour practice on the part of the employer is established in the complaint, the Industrial and Labour Courts are empowered to issue preventive as well as positive direction to an erring employer.

“33. The provisions of MRTU and PULP Act and the powers of Industrial Labour Courts provided therein were not at all under consideration in the case of Uma Devi1. As a matter of fact, the issue like the present one pertaining to unfair labour practice was not at all referred, considered or decided in Umadevi1. Unfair labour practice on the part of the employer in engaging employees as badlies, casuals or temporaries and to continue them as such for years with the object of depriving them of the status and privileges of permanent employees as provided in Item 6 of Schedule IV and the power of Industrial and Labour Courts under section 30 of the Act did not fall for adjudication or consideration before the constitution Bench”.

Again the Hon'ble Supreme Court in another case **Hari Nandan Prasad vs. Employer I/R to management of Food Corporation of India and another reported in AIR 2014 SC 1848**, wherein the issue was as to whether the Labour Court Tribunal has the jurisdiction to order regularization of the workman was considered in the context of the provision of the Act and the decision of the constitution bench in the case of Uma Devi and the Hon'ble Court came to hold that the powers conferred upon the Industrial Tribunal/Labour Court under the ID Act are quite wide. The Act deals with industrial Disputes, provides for conciliation, adjudication, and settlements, and regulates the rights of the parties and the enforcement of the award and settlement. Not only that way back in the year 1950 in the case of *Bharat Bank Limited vs. Employees of Bharat Bank* reported in (1950) LLJ 921 The Hon'ble Supreme Court had observed:

“In settling the disputes between the employers and the workmen, the function of the Tribunal is not confined to administration of justice in accordance with law. It can confer rights and privileges on either party which it considers reasonable and proper, though they may not be within the terms of any existing agreement. It has not merely to interpret or give effect to the contractual rights and obligations of the parties. It can create new rights and obligations between them which it considers essential for keeping industrial peace.”

In the above said background and on considering the different pronouncements of Hon'ble Apex Court, while reverting to the facts of the present case, the grievance of the claimants is that they were working as casual workers against the permanent vacancy and the nature of the duty discharged by them was perennial in nature. But the management in order to deprive them of their right of permanency and regularization illegally terminated their service. They have also pleaded

that the principle of last come first go was not followed by the management which amounts to violation of the provision of 25-G of the ID Act. No valid reason has been assigned by the management in this regard.

Reliance has been placed on behalf of the workman in the case of Mackinon Mackenzie & Co. Ltd. vs. Mackinon Employees Union reported in **AIR 2015 SC 1373** and in the case of **Workman of Sudder Workshop of Jorehut Tea Co. Ltd. vs. Jorehut Tea Co. Ltd. reported in AIR 1980 SC 1454**. In these two judgments the Hon'ble Supreme Court have held that last come first go is not an inflexible rule and extraordinary situation may justify variation. In such a case the management has to assign the reason for departure from the rule. In this case no explanation has been offered by the management as to why the juniors were allowed to continue whereas the present workman being the senior was terminated.

Hence, for the foregoing reasons it is concluded that the claimant/workmen were subjected to unfair labour practice by the management. There was a gross violation of the provision of Section 25-G of the ID Act. They having discharged the duty perennial in nature, for more than 240 days in a calendar year, this tribunal while following the judgment of the Apex Court in the case of Hari Nandan Prasad referred supra feels it proper to exercise its jurisdiction to order the regularization of the workmen who were initially appointed as a casual workers and continued to work for 12 years and also worked for more than 240 days in the calendar years preceding to their termination. The issue is accordingly answered in favour of the workmen. Hence, ordered.

ORDER

The reference is accordingly answered. The management is directed to regularize the service of the workmen/claimant as per the list annexed with this award against the post they were working w.e.f. the date of their termination i.e. 23.03.2012 with back wages at par with the regular employees of the BSNL in that cadre. The exercise of reinstatement of the workmen shall be completed within 3 months from the period when this award would become enforceable. The management is further directed to pay the arrear wage accrued in favour of the claimant/workmen within the above said 3 months period failing which the accrued amount shall carry interest @ 12% per annum from the date of accrual till final payment is made. Copy be supplied to the parties and the record be consigned in the record room.

The reference is accordingly answered.

LIST OF WORKMEN

Sr. No.	Name & Father/husband's Name	Date of joining/year of joining	Designation
1.	Shri Narender Singh S/o Shri Govind Singh	01.08.2000	Line man
2.	Shri Mukesh Kumar S/o Shri Arjun Gupta	05.03.1998	Line man
3.	Aslam Shah S/o Bhura Shah	2000	Line man
4.	Shri Deepak Kumar S/o Shri. Arjun Gupta	01.10.2000	Line man
5.	Shri Virender Singh S/o Shri. Govind Singh	10.10.2000	Line man
6.	Shri Subhash Chauchan S/o Shri Guman Singh Chauchan	15.05.2002	Line man

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 3 जून, 2019

का.आ.1012.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स प्रबंध निदेशक, सेंट्रल इलेक्ट्रॉनिक्स लिमिटेड, साहिबाबाद, गाजियाबाद (उत्तर प्रदेश) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली के पंचाट (संदर्भ संख्या 26/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 17.05.2019 को प्राप्त हुए थे।

[सं. एल-42012/205/2014-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 3rd June, 2019

S.O. 1012.— In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 26/2015) of the Central Government Industrial Tribunal-cum-Labour Court-2, New Delhi, as shown in the Annexure, in the Industrial Dispute between the employers in relation to The Managing Director, Central Electronics Limited, Sahibabad, Ghaziabad (U.P.) and Others, and their workmen which were received by the Central Government on 17.05.2019.

[No. L-42012/205/2014-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 26/2015

Date of Passing Award- 25th April, 2019.

Between:

Shri. Nawab Khan,
Rep of the Group of workmen,
At-11/29, Sec-3, Rajendra Nagar,
Sahibabad,
Ghaziabad (U.P.)-201005.

... Workman

Versus

The Managing Director,
Central Electronics Limited,
Sahibabad,
Ghaziabad (U.P.)- 201005.

... Management

Appearances:-

None for the claimant, (Advocate)

...For the Workman

Shri Raj Kumar Tyagi, (Advocate)

...For the Management

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Central Electronics Limited, and its workman/claimant herein, under clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L- 42012/205/2014-IR(DU) dated 04.02.2015 to this tribunal for adjudication to the following effect.

“Whether the management of CEL is justified in holding the pay-fixation and payment of arrear of the retired employees in the bar of financial constraints while the pay revision has already been implemented in case of existing employees? If not, what should be time limit for implementation and payment of arrears in respect of retired and eligible employee as per pay revision w.e.f. 01.01.2007?

The claimant filed a claim statement stating therein that he was working as an employee of the management and retired from the service on 31.03.2001. The Government effected revision of pay w.e.f. 01.01.1997 and thus, the workman is entitled to the benefits of such pay revision and the amount accrued as arrear. Despite repeated demands the management is not paying the arrear salary as per the pay revision of the workman for 39 months preceding to his retirement. A decision in this regard was taken by Board of Directors of the Management Company. But the management did not give regard to the same. Though the pay of the serving employees was revised and arrear was paid, the arrear of the retired employee withheld. Hence he has prayed for a direction to the management for calculation of the arrear pay and disbursement of the same alongwith interest @10% per annum.

On receipt of the notice the management appeared and filed written statement stating therein that the management is a sick company facing financial hardship. While submitting about the loss suffered it took a plea that till date no official memorandum has been issued indicating the date from which the revised pay would be applicable to the employees of the company. Thereby the management denied the allegations leveled by the workman and insisted for dismissal of the claim since the same is not computable at this stage.

Considering the pleadings the issues were framed for adjudication.

ISSUES

1. Whether the management of CEL is justified in holding the pay-fixation and payment of arrear of the retired employees in the barb of financial constraints while pay revision has already been implemented in case of existing employees? If so, its effect?
2. If not, what should be the time limit for implementation and payment of arrears in respect of retired and eligible employees as per pay revision w.e.f. 01.01.2007? If so, its effect?
3. To what relief the workman is entitled to and from which date?

During the proceeding the workman abandoned and after providing several opportunities for adducing evidence the management was called upon to adduce evidence. One Rajkumar Tyagi an Assistant Officer of the management being present submitted that there is no oral evince to be laid on behalf of the management. However he produced a computer generated statement indicating payment of arrears to the retired employees on different spell. The name of the workman Nawab Khan appears at serial No. 11 of the list showing payment of arrear on different dates. This statement of the management has not been disputed by the workman. Hence, in absence of evince to the contrary the documents filed by the management are accepted to conclude that the claim advanced by the workman was satisfied by the management during the pendency of the proceeding and noting more is left to be adjudicated. Accordingly the reference is answered.

ORDER

The reference be and the same is dismissed on contest and no claim award is passed. Copy be supplied to the parties and the record be consigned in the record room.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 3 जून, 2019

का.आ.1013.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स निदेशक, गेहूं अनुसंधान निदेशालय (आईसीएआर), करनाल (हरियाणा) और अन्य एवं उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चंडीगढ़ के पंचाट (संदर्भ संख्या 35/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 03.06.2019 को प्राप्त हुआ था।

[सं. एल-42011/96/2015-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 3rd June, 2019

S.O.1013.— In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 35/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Chandigarh, as shown in the Annexure, in the Industrial Dispute between the employers in relation to The Director, Wheat Research Directorate (ICAR), Karnal (Haryana) and Others, and their workmen which were received by the Central Government on 03.06.2019.

[No. L-42011/96/2015-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE**IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH****Present:** Sh. A.K. Singh, Presiding Officer**ID No. 35/2015****Registered on:-10.09.2015**

Sh. Naseeb Singh S/o Sh. Mange Ram, Laboratory Assistant,
Office of the Director, Wheat Research Directorate (ICAR),
Post Box No.158, Kunjpura Road, Karnal.

...Workman

Versus

The Director, Wheat Research Directorate(ICAR),
Post Box No.158, Kunjpura Road, Karnal-132001.

...Management

AWARD**Passed on:-22.05.2019**

Central Government vide Notification No. L-42011/96/2015-IR(DU) Dated 26.08.2015, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

“Whether the action of the management in not regularising the services of the workman is legal and justified? If not, what relief the workman is entitled to and from which date?”

1. After receiving the reference, parties were informed through notice. In pursuance of the notice, claimant has filed his claim statement, alleging therein that he was appointed by the respondent-management on daily wage basis through the employment-exchange in November 1993 for attending the works of perennial nature. The claimant/workman worked in different offices of the management as Messenger, Clerk upto July 2004 without any break and had completed 240 days in every calendar year. The services of the workman were abruptly terminated by the management w.e.f. 01.08.2004 without following the mandatory provisions of the Industrial Disputes Act, 1947. On failure of industrial dispute against termination of his service, the Central Government had referred the dispute for adjudication before Central Government Industrial Tribunal-cum-Labour Court-I, which is registered as ID Case No.66 of 2006 titled Naseeb Singh Vs. The Director Wheat Research Directorate(ICAR), Kunjpura Road, Karnal, and award was passed on 26.10.2010 in favour of the workman for reinstatement with full back wages. Subsequently, the Hon'ble Punjab & Haryana High Court, Chandigarh on the basis of Civil Writ Petition No.17848 of 2011 preferred by the management modified the award to the extent of awarding full back wages has been set aside. In pursuance of the award, an application dated 02.12.2011 of the claimant/workman the respondent directed him for duty on DWR. The workman has thus completed more than 20 years of services with the management. Workman approached respondent-management again and again for regularization of his services against one vacant post but management did not regularize his services and referred case of regularization to the Indian Council of Agricultural Research, New Delhi. There are sanctioned post available against which the services of the workman could have been regularized as is evident from the advertisement issued by the management on 27.12.2013 and staff position depicted therein which is appended as Annexure C-7. It is also alleged that services of the juniors to the claimant/workman have been regularized and the claim of the workman has been ignored in spite of the instructions issued on 07.06.1998 and 11.12.1996 in utter violation of Article 14 and 16 of the Constitution of India till today. The claimant/workman approached the ALC, Karnal for conciliation under Section 12(1) of the Act. But conciliation proceeding terminated in failure resulting the present reference by the Government of India Ministry of Labour vide order dated 26.08.2015. The action of the respondent-management in not regularizing the services of the claimant/workman squarely falls within the definition of unfair practice in order to deprive the benefits and financial loss for no fault on his part. It is also mentioned that management has failed to regularize the claimant/workman even then the principle of equal pay for equal work is not followed by the management against the settled position of law. Consequently, it is prayed that management be directed to regularize the service of the workman along with all consequential relief in nature of pay, arrears of salary, seniority, promotion etc.

2. Respondent-management has filed its written statement, alleging therein that the dispute raised by the workman against the management is liable to be rejected as no cause of action arose to file the claim petition. The workman has not approached the Hon'ble Court with the clear hands and has concealed material facts as such, he is not entitled for any relief. It is also alleged that the workman was initially appointed in the month of November, 1993 on daily wage basis and in the month of March 1995 management had introduced the contract system in the institute and services of the

workman were hired through contractor on DC rate basis fixed by the Deputy Commissioner from 1997. The workman was again engaged through NATP on consolidated salary of Rs.3,000/- per month and the services of the workman were dispensed with on the expiry of the said project. Thereafter, the workman was again engaged on DC rate basis from 01.05.2004 to 31.07.2004. As per the averments made in the written statement, workman was reinstated by the respondent-management as per the award dated 26.10.2010 in pursuance of the order of the Tribunal modified by the Hon'ble Punjab & Haryana High Court. It is also submitted that DoPT has not issued any order for the regularization of the contract labour/daily wages workers and the scheme framed by DoPT Casual Labours(Grant of Temporary Status and Regularization) Scheme of Govt. of India, 1993 was not applicable to the case of the workman as he does not fall within the ambit of said scheme hence, he cannot be regularized. The sanctioned post can only be filled by the advertising the same by calling the same from the eligible candidates and thereafter by following the procedure of selection by way of interview etc. It is also submitted that the case of the workman does not fall in laid down by the Hon'ble Supreme Court. It is therefore prayed that reference may kindly be decided against the workman and in favour of the respondent-management.

3. Workman Naseeb Singh has filed his rejoinder/replication reiterating the facts already mentioned in the claim petition. It is mentioned in the rejoinder that the present claim petition is only for the regularization of the claimant/workman consequent upon his reinstatement in view of law laid down by the Hon'ble Constitutional Bench of the apex court in Uma Devi's case. It is also alleged that the continuity of the service of workman/claimant were from November 1993 till 2004 is proved beyond an iota of doubt by the award passed by the Hon'ble Labour Court and management cannot raise any ifs and buts in view of the operation of the doctrine of res judicata. The workman has all requisite qualification and experience in spite of that he is not considered for regularization while the services of the juniors to the workman/claimant are regularized in violation of the Industrial Disputes Act, 1947.

4. Both the parties were afforded the opportunity for adducing evidence. Workman Naseeb Singh has submitted his affidavit as Ex.WW1/A along with documents Ex.WW1/1 to WW1/23. This witness has reiterated all the facts mentioned in the claim petition along with the fact that the unequal treatment is meted out to him as juniors who are appointed subsequently are getting more wages in comparison to the workman who are paid only salary of Rs.9,735/- per month without DA and other allowances. He has denied the suggestion that he did not work continuously with the respondent-management upto 31.07.2004 from his appointment in the year November 1993.

5. Contrary to this, management has examined Sachin Agnihotri, Administrative Officer, Indian Institute of Wheat and Barley Research, who has proved his affidavit Ex.MW1/A along with documents Ex.MW1/1 to Ex.MW1/2 related with the scheme Casual Labours(Grant of Temporary Status and Regularisation) Scheme of Govt. of India, 1993 and subsequent clarification dated 06.06.2002. This witness has admitted that management has given wages to the workman as per the revision of DC rates. He has also accepted that the advertisement given by the department dated 27.12.2013 could not be implemented by the management because of the restriction of the Agriculture Ministry. He has denied that he has any document regarding the restriction given by the concerned Ministry. This witness has also accepted that there are vacancies of skill supporting staff. According to this witness, the instruction of Ministry of Personnel Public Grievance and Pension are binding upon the management. Thus, this is clear from the statement of the witness of the management that there exist vacancies of skill supporting staff in the management.

6. I have heard the oral arguments of Sh. S.D. Sharma, Ld. Counsel of the workman and oral arguments of the Ld. Counsel of the management Sh. S.K. Gupta, and perused the written arguments filed by the workman and file carefully.

7. Learned counsel of the workman has contended that workman/claimant was initially appointed through employment exchange by the respondent-management in the month of November 1993 and worked till his termination by the management dated 31.07.2004. Subsequently, he was terminated on 01.08.2004 illegally against which reference was made by the competent ministry which was registered as ID Case No.66 of 2006 titled Naseeb Singh Vs. The Director Wheat Research Directorate(ICAR), Post Box No.158, Kunjpura Road, Karnal, and decided by the CGIT-I, Chandigarh on 26.10.2010 in favour of the workman directing the reinstatement with full back wages, which was modified by the Hon'ble Punjab & Haryana High Court in Civil Writ Petition No.17848 of 2011 to the extent that back wages shall not be payable to the workman against which management has not preferred an appeal and an order of the Hon'ble Punjab & Haryana High Court has become final and have the effect of res judicata. Thus, according to the learned counsel of the workman, management could not argue that workman has not completed more than 10 years from the date of his appointment to the date of illegal termination. Learned counsel has also contended that workman is not claiming his regularization in the light of the scheme of Govt. of India Casual Labours(Grant of Temporary Status and Regularization) initiated in the year 1993. As per the arguments of the learned counsel of the management, workman is claiming his regularization by virtue of the scheme propounded by the Government in the year 1988 and the judgment pronounced by the Constitutional Bench of the Hon'ble Supreme Court in the case of Uma Devi Vs. State of Karnataka, Surender Singh case and Union of India Vs. Central Administrative Tribunal and Oths. decided on 08.01.2019 and subsequent judgment of the Hon'ble Supreme Court in the case of Narender Kumar and Oths. Vs. State of Jharkhand and Oths. Decided on 01.08.2018. Learned counsel has also contended that management has not disputed that claimant

is not matriculate or he is not competent for the post regarding which advertisement has been made vide order dated 27.12.2013. Learned counsel of the workman has further contended that workman/claimant is getting only basic pay and other allowances are not given against basic principle of equal pay for equal work.

8. Learned counsel of the management would submit that workman was appointed through employment-exchange without any advertisement and examination as such, his appointment is not legal hence, his services could not be regularized by virtue of the judgment of Uma Devi(supra) case and Surender Singh case as is observed by the Hon'ble apex court itself. Learned counsel has also contended that the workman cannot be regularized under the scheme Casual Labours(Grant of Temporary Status and Regularization) Scheme of Govt. of India, 1993, because he does not fall within the provision of the scheme as he was appointed after the pronouncement of the scheme. Learned counsel also contended that by virtue of illegal appointment, services of the workman could not be regularized on the pretext of the judgment of the Hon'ble Supreme Court as sanctioned post can only be filled by advertising the same and by calling the application from the eligible candidates and thereafter by following the procedure of selection through interview etc. it is also argued that there is no such instruction issued by the DoPT regarding the regularization of the workman and others who are not appointed on sanctioned post. Thus, according to the learned counsel of the management, workman does not fall within the ambit of scheme for the regularization of the workers as such, he has no legal right to claim the benefit of regularization on the sanctioned post. Learned counsel further contended that workman/claimant is appointed as daily wager and now paid consolidated salary as such he is not entitled to get salary of regular employee in garb of equal pay for equal work.

9. At very outset it is necessary to mention all the facts which are admitted to both the parties which is necessary to appreciate the controversy between the parties. The engagement of claimant as daily wager in the month of November 1993 by management through employment exchange and condition of service till his termination on 31.07.2004 on different posts i.e. daily wager messenger and clerk is not disputed. Similarly, termination of claimant on 01.04.2008, his reinstatement on 24.01.2012 in pursuance of the award of Tribunal and subsequent confirmation by the Hon'ble Punjab & Haryana High Court is also not disputed between the parties. It is also not disputed that there was not an issue in the earlier dispute about the engagement of the claimant on sanctioned post and its regularization by virtue of serving management for more than ten years.

10. The first and foremost contention of the learned counsel of the workman is about regularization of the workman on the strength of policy instruction of Government dated 07.06.1988 which is attached as Ex.WW1/13 with the file and judgment of Constitution Bench of Supreme Court in Secretary State of Karnataka Vs. Uma Devi(supra) and subsequent judgment of State of Karnataka Vs. M.K. Kesari & Oths (2010) 9 SCC 247. In fact to avoid the controversies about the regularization of employee in different organization the Constitution Bench of Hon'ble Supreme Court in case of Uma Devi has laid down the criteria of such an employees(daily wager, temporary or casual worker etc.) as one time measure for regularization of their services. The relevant para 44 of the Judgment runs as follows:-

“44. One aspect needs to be clarified. There may be cases where irregular appointments(not illegal appointments) as explained in S.V. Narayanappa(supra), R.N. Nanjundappa(supra) and B.N. Nagarajan(supra), and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover or orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularization or making permanent, those not duly appointed as per the constitutional scheme.”

11. Undisputedly, claimant/workman had rendered more than ten years service in the establishment of respondent till the date of judgment pronounced by the Hon'ble Supreme Court in Uma Devi case(supra). Learned counsel of claimant has contended on the strength of 10 years continuous service of workman for his regularization as he was employed through Employment Exchange a competent agency for supply of the workmen at relevant time. Thus, the relevant question which arises for consideration is whether the claimant has rendered his services for ten years or more against sanctioned post which is precondition for regularization. Furthermore whether his appointment is illegal or irregular in the eye of law. The Hon'ble Supreme Court in the case of the State of Karnataka and others Vs. M.L. Kesari & Others 2010(9) SCC 247 has clarified the term illegal and irregular in para 7 of the judgment which runs as follows:-

“7. It is evident from the above that there is an exception to the general principles against “regularization” enunciated in *Umadevi*(3), if the following conditions are fulfilled:

- (i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit of protection of the interim order of any court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.
- (ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular.”

12. So far as case of workman is concerned. It is not disputed that he was appointed through Employment Exchange in the month of November 1993 and continued in the service of the management till 31.07.2004 rendering his services more than 10 years in the establishment of the respondent-management. Management has also not denied anywhere that he has not done matriculation as such, the employment of the workman can be considered to be irregular and not illegal because he possessed the prescribed qualification in the light of the advertisement of management but had not been selected without undergoing the process of open competitive selection as is required in the above advertisement. In this connection, Para 53 of the *Uma Devi* case could not be over cited as it is an exception made to the general principle against regularization as one time measure which is as under:-

“53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa, R.N Nanjundappa and B.N. Nagarajan and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further by passing of the constitutional requirement and regularization or making permanent, those not appointed as per the constitutional scheme.”

Undoubtedly, in the case of *M.L. Kesari*(supra) while explaining the one time measure, it is made clear that even if any employer as the one time exercise in terms of Para 53 of the *Uma Devi* case but had not considered the case of some employees who were entitled for employment in line of Para 53 they are required to be considered regularization until last workman case is considered by the management. There is nothing on record to show that establishment has ever initiated any exercise in the light of the judgment of *Uma Devi* followed by the subsequent office memorandum dated 11.12.2006 of Government of India, Ministry of Personnel Public Grievances and Pension(DOPT). Question still remains to be seen whether the workman was engaged against sanctioned post of the establishment or continued as such till his termination by the management.

13. The facts relating to initial appointment against the sanctioned post has nowhere mentioned in the claim petition as well as the statement of the witness of the workman stated on oath that he had been appointed against sanctioned post or continued till in service against sanctioned post. In this respect, learned counsel of the workman contended that as per advertisement made by the Directorate of Wheat Research advertisement no.DWR/1/13 there are 11 vacancies of supporting staff and workman should be regularized on the above vacant post as per judgment of *Uma Devi* and subsequent memorandum of Govt. of India, Ministry of Public Grievances and Pension. Learned counsel of the management while contradicting the arguments of the workman-counsel submitted that the aforesaid advertisement does not disclose that the vacancies of the supporting staff was fallen in between joining of the workman in the year 1993 and subsequent termination on 31.07.2004. Thus, according to the learned counsel of the management, the arguments of the workman-counsel is beyond the scope of legal proposition in spite of the fact that workman possessed require qualification of matriculation. It is true that there is nothing on record to substantiate the argument advanced by the workman-counsel regarding the vacancy of supporting staff between the relevant period. Similarly, to my mind, in the absence of any substantive evidence oral or documentary regarding the services rendered by the workman against

sanctioned post it cannot be observed that he is legally entitled to be regularized in the light of the judgment of Supreme Court in cases of Uma Devi, Kesary and followed by subsequent judgments of Narender Kumar Tiwari and others Vs. State of Jharkhand and others decided on 01.08.2018 or the State of Bihar and others vs. Kirti decided on 03.03.2018 etc. as is referred and cited by the learned counsel of the workman.

14. Now the residual question remains to be seen whether the workman is entitled for any relief regarding the wages, perks and salaries as is argued by the learned counsel of the workman. There is no dispute that workman is appointed as lab assistant in Barley vide order dated 27.01.2012 Ex.WW1/5 clarifying that he will be paid the wages as fixed by the DC Karnal. It is unfortunate that after the long litigation and consequent reinstatement after almost 8 years workman was again appointed with the paid wages as fixed by the DC, Karnal for the lab attendant. Learned counsel of the workman has drawn my attention towards Para 10 of the rejoinder filed by the workman against written statement filed by the management and contended that persons junior to the workman are working with respondent-management and management is giving basic pay, DA and other allowances whereas the claimant/workman is being discriminated only because of his litigation against respondent-management for his duly deserve right which is a violative of Article 14 and 16 of the Constitution of India. The workman has mentioned the names of 9 workmen Ashok Kumar, Balbir Singh, Budh Singh etc. at serial no.1 to 9 who are working under the ICR along with their basic pay and DA amounting Rs.5740+6486 who are appointed after the appointment of workman. This fact is supported by the affidavit of the workman along with photocopies of the documents supplied by Public Information of the respondent vide letter dated 17.10.2015 Ex.WW1/20. Thus, the facts alleged in the replication as well as affidavit of the workman has not been contradicted by the management in his written statement or evidence given by the witness Sachin Agnihotri on oath. It is also pertinent to mention that management has not cross-examined the witness on the facts which is relevant and violative of Article 14 and 16 of the Constitution of India regarding the discrimination meted out to the workman for the perks and allowances payable to him.

15. In this connection, learned counsel has drawn my attention towards the judgment of the Hon'ble Supreme Court in the case of Sube Shankar Dubey Vs. Divisional Forest Officer and others decided on 14.11.2018 arising out of SLP(Civil) 1045/2016 the Hon'ble Supreme Court referring the earlier judgment of State of UP and Others Vs. State of (6)9 SSC 345 and State of Punjab and others Vs. Jagjit Singh and others(2017) 1 CCA 139 has quoted with approval of Para 58 of the Jagjit Singh(supra) which runs as follows:-

“58. In our considered view, it is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work cannot be paid less than another who performs the same duties and responsibilities. Certainly not, in a welfare State. Such an action besides being demeaning, strikes at the very foundation of human dignity. Anyone, who is compelled to work at a lesser wage does not do so voluntarily. He does so to provide food and shelter to his family, at the cost of his self-respect and dignity, at the cost of his self-worth, and at the cost of his integrity. For he knows that his dependants would suffer immensely, if he does not accept the lesser wage. Any act of paying less wages as compared to others similarly situate constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation.”

16. In the case of Jagjit Singh(supra) the Hon'ble Supreme Court has considered the eligibility of issue relating to temporary employees(daily wagers appointees, ad hoc appointees, employees appointed on casual basis, contractual employees and likewise). As to whether they are entitled to the minimum of the regular pay scale on account of they are performing the same duties which are discharged by those engaged on regular basis against the sanctioned post. After considering several judgments including the judgments of Tilak Ram the Hon'ble Court has held that temporary employees are entitled to draw wages at the minimum of the pay scales which are applicable to the regular employees holding the same post. On the basis of the above settled position of law certainly workman/ claimant is entitled to draw wages at the minimum of the pay scales which are applicable to the regular employees holding the post of supporting staff/lab attendant.

17. Having regard to factual and legal proposition discussed above, this Tribunal is of the firm opinion that the claimant/workman is not entitled for regularization in view of the cases of Uma Devi(supra), M.L. Kesari(supra) and other subsequent judgments of the Hon'ble Court. To my mind, claimant/workman is fully entitled minimum of the pay scales which is applicable to the regular employees holding the post of supporting staff/lab assistant from the date of his joining in pursuance of the order of the Tribunal dated 26.10.2010 with arrear and other allowances payable at par with the employees working in management. Hence, management is directed to comply the award within two months from the notification of the award by the Central Government.

18. The reference is answered accordingly.

A. K. SINGH, Presiding Officer

नई दिल्ली, 3 जून, 2019

का.आ.1014.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स मेनन और पाई प्रमुख आरईडी, भारतीय दुर्लभ पृथ्वी लिमिटेड, उद्योगमंडल, केरल और अन्य एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, एर्नाकुलम के पंचाट (संदर्भ संख्या 19/2017) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.04.2019 को प्राप्त हुआ था।

[सं. एल-42011/72/2017-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 3rd June, 2019

S.O.1014.— In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 19/2017) of the Central Government Industrial Tribunal-cum-Labour Court, Ernakulam, as shown in the Annexure, in the Industrial Dispute between the employers in relation to The M/s. Menon and Pai Head RED, Indian Rare Earth Ltd., Udyogamandal, Kerala and Others, and their workmen which were received by the Central Government on 09.04.2019.

[No. L-42011/72/2017-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present: Shri.V. Vijaya Kumar, B.Sc., LLM, Presiding Officer

(Friday the 22nd day of March, 2019)

ID No. 19/2017

Union : The General Secretary,
Indian Rare Earth Employees Union,
Udyogamandal,
Kerala-683 501.

By V.N.Sathisan

Management : The Head RED,
Indian Rare Earths Ltd.,
Udyogamandal,
Kerala-683 501

By M/s. Menon & Pai

This case coming up for final hearing on 22.03.2019 and this Tribunal-cum-Labour Court passed the following on the same day,

AWARD

In exercise of the powers conferred by clause (d) of sub-section(1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, the Government of India/Ministry of Labour by its order No.L-42011/72/2017-IR(DU) dated 03.07.2017 referred the following industrial dispute to this Tribunal for adjudication.

2. The dispute is:

“Having agreed to the terms and conditions of the settlement and while receiving the benefits extended by the Management from time to time, including the promotions as per company transfer policy, the act of the Union in raising this type of dispute is frivolous, vexatious and uncalled for”

3. Both the Union and the Management entered appearance.
4. Shri. V.N.Sathisan, General Secretary of the Union filed a Memo dated 11.03.2019 informing that the issues raised in this dispute are settled between the Union and Management through a Memorandum of settlement dated 27th September 2017 and hence the Union may be permitted to withdraw the dispute.
5. Since the dispute is settled out of Court between parties the same is dismissed as withdrawn.
6. Hence an award is passed dismissing the dispute as withdrawn. Memo dated 11.03.2019 filed by the Union will form part of this award.

The award will come into force one month after its publication in the official Gazette.

Dictated to the Assistant, transcribed and typed by him and passed by me on this 22nd day of March 2019.

V. VIJAYA KUMAR, Presiding Officer

APPENDIX

Union : Memo dated 11.03.2019

Management : Nil

**BEFORE THE HON'BLE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
ERNAKULAM**

ID No.19 of 2017

Union :

General Secretary, Indian Rare Earths Employees Union (CITU) Udyogamandal, Kerala – 683 501.

Vs.

Management

The Head RED, Indian Rare Earths Limited, Udyogamandal, Kerala – 683 501.

MEMO FILED BY THE REPRESENTATIVE FOR THE UNION

I am the General Secretary of Indian Rare Earths Employees Union (CITU) representing the Union in the above dispute. It is respectfully submitted that the above dispute was settled between the Management and the Union. The Memorandum of Settlement was entered between the parties on 27th September, 2017. Hence, in the light of the settlement arrived between parties in the present dispute, the Hon'ble Tribunal may be pleased to permit the Union to withdraw the above dispute.

Dated this the 11th day of March, 2019.

Sd./-illegible
Representative of the Union General Secretary,
IRE Employees Union (CITU)

नई दिल्ली, 3 जून, 2019

का.आ.1015.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स निदेशक, राष्ट्रीय अनुसंधान केंद्र सोलापुर (महाराष्ट्र) एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, मुंबई के पंचाट (संदर्भ संख्या CGIT-2/81 of 2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 29.04.2019 को प्राप्त हुए थे।

[सं. एल-42012/80/2014-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 3rd June, 2019

S.O.1015.— In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT-2/81 of 2014) of the Central Government Industrial Tribunal-cum-Labour Court-2 Mumbai, as shown in the Annexure, in the Industrial Dispute between the employers in relation to The Director, National Research Center for Pomegranate, Solapur (Maharashtra) and their workmen and others, which were received by the Central Government on 29.04.1019.

[No. L-42012/80/2014-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

PRESENT :M. V. Deshpande, Presiding Officer

REFERENCE NO.CGIT-2/81 of 2014

EMPLOYERS IN RELATION TO THE MANAGEMENT OF

(1) NATIONAL RESEARCH CENTRE FOR POMEGRANATE

(2) M/S. SWADESHI SECURITIES

The Director,
National Research Centre for Pomegranate,
Near Solapur University,
Solapur (Maharashtra).

M/s. Swadeshi Security,
96, Salgar Vasti,
Dongaon Road,
Solapur (Maharashtra).

AND

THEIR WORKMEN

Shri Tayappa J. Maske,
Somnath Nagar, Akole Kati,
Tal North Solapur,
Solapur (Maharashtra) – 413222.

APPEARANCES:

FOR THE EMPLOYER : Shri R. B. Rai, Representative
FOR THE WORKMEN : Absent

Mumbai, dated the 12th March, 2019

AWARD

1. This is reference made by the Central Government in exercise of powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide Government of India, Ministry of Labour & Employment, New Delhi vide its order No. L-42012/80/2014 – IR (DU) dated 25.07.2014. The terms of reference given in the schedule are as follows :

“Whether the demand of the workman Shri Tayappa J. Maske, for asking regulation as an employee of National Research Centre for Pomegranate, Solapur is legal and justified ? If yes to what relief the workman is entitled to ?”

2. After the receipt of the reference, both the parties were served with the notices.

3. On going through Roznama it appears that the concerned workman is absent since long. He has not filed affidavit in support of his statement of claim. Today also he is absent hence there is no evidence to substantiate the statement of claim. Therefore the reference is disposed of for want of evidence to substantiate the statement of claim.

4. Hence the reference is rejected with no order as to costs. Hence order.

ORDER

Reference is rejected with no order as to costs.

Date: 12.03.2019

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 3 जून, 2019

का.आ.1016.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स उपाध्यक्ष, तारा कम्युनिकेशंस लिमिटेड, मुंबई और अन्य एवं उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, मुंबई के पंचाट (संदर्भ संख्या CGIT-2/29 of 2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 04.06.2019 को प्राप्त हुए थे।

[सं. एल-40011/09/2016-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 3rd June, 2019

S.O.1016.— In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT-2/29 of 2017) of the Central Government Industrial Tribunal-cum-Labour Court-2 Mumbai, as shown in the Annexure, in the Industrial Dispute between the employers in relation to The Vice President, Tara Communications Ltd., Mumbai, and their workmen which were received by the Central Government on 04.06.2019.

[No. L-40011/09/2016-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT: M. V. Deshpande, Presiding Officer

REFERENCE NO.CGIT-2/29 of 2017

EMPLOYERS IN RELATION TO THE MANAGEMENT OF TARA COMMUNICATIONS LTD.

The Vice President,
M/s. Tara Communications Ltd.,
Videsh Sanchar Bhavan, M.G. Road,
MUMBAI – 400 001.

AND

THEIR WORKMEN

The President,
Tata Communications Employees' Union,
Videsh Sanchar Bhavan,
16th Floor, M.G. Road,
MUMBAI – 400 001.

APPEARANCES:

FOR THE EMPLOYER : Mr. Vinay Mishra, Representative

FOR THE WORKMEN : Mr. J. H. Sawant, Advocate

Mumbai, dated the 28th May, 2019

AWARD

1. This is reference made by the Central Government in exercise of powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide Government of India, Ministry of Labour & Employment, New Delhi vide its order No. L-40011/09/2016 – IR (DU) dated 17.04.2017. The terms of reference given in the schedule are as follows :

“It is reported that the PLI is to be computed on the basis of the basic pay and as the settlement dated 16.05.2013 provided only for a notional effect of the extension of one time promotion without monetary value or arrears of salary w.e.f. 01.04.2012 to 31.12.2012, during the said period, there was no real / actual monetary enhancement of wages and hence the question of arrears of PLI on the notionally hiked wages does not arise.”

2. After the receipt of the reference, both the parties were served with the notices.

3. On going through Roznama, it appears that the union is absent since 16.8.17. Statement of claim has not been filed by the union. As such there is no statement of claim to substantiate the contentions.

4. For want of evidence therefore the reference is liable to be rejected.

5. Hence the reference is rejected with no order as to costs for want of evidence. Hence Order.

ORDER

Reference is rejected with no order as to costs for want of evidence.

Date: 28.05.2019

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 3 जून, 2019

का.आ.1017.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स निदेशक, राष्ट्रीय अनार अनुसंधान केंद्र सोलापुर (महाराष्ट्र) एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं.-2, मुंबई के पंचाट (संदर्भ संख्या CGIT-58 of 2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 06.06.2019 को प्राप्त हुए थे।

[सं. एल-42012/57/2014-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 3rd June, 2019

S.O. 1017.— In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT-2/58 of 2014) of the Central Government Industrial Tribunal-cum-Labour Court-2 Mumbai, as shown in the Annexure, in the Industrial Dispute between the employers in relation to The Director, National Research Centre for Pomegranate, Solapur (Maharashtra), and their workmen which were received by the Central Government on 06.06.2019.

[No. L-42012/57/2014-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI****PRESENT : M. V. Deshpande, Presiding Officer****REFERENCE NO.CGIT-2/58 of 2014****EMPLOYERS IN RELATION TO THE MANAGEMENT OF****(1) NATIONAL RESEARCH CENTRE FOR POMEGRANATE****(2) M/S. SWADESHI SECURITIES**

The Director,
National Research Centre for Pomegranate,
Near Solapur University,
Solapur (Maharashtra).

M/s. Swadeshi Security,
96, Salgar Vasti,
Dongaon Road,
Solapur (Maharashtra).

AND**THEIR WORKMEN**

Smt. Neelavati Gorakh Raut,
R/o Kondi,
Tal North Solapur,
Solapur (Maharashtra) – 413001.

APPEARANCES:

FOR THE EMPLOYER : Shri S. P. Chinchwadkar, Advocate

FOR THE WORKMEN : Shri V. R. Deshpande, Advocate

Mumbai, dated the 16th May, 2019

AWARD

1. This is reference made by the Central Government in exercise of powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide Government of India, Ministry of Labour & Employment, New Delhi vide its order No. L-42012/57/2014 – IR (DU) dated 23.07.2014. The terms of reference given in the schedule are as follows :

“Whether the demand of the workman Smt. Neelavati Gorakh Raut, for asking regulation as an employee of National Research Centre for Pomegranate, Solapur is legal and justified ? If yes to what relief the workman is entitled to ?”

2. After the receipt of the reference, both the parties were served with the notices.

3. On going through Roznama it appears that the concerned workman is absent since long. She has not filed affidavit in support of her statement of claim. Today also she is absent hence there is no evidence to substantiate the statement of claim. Therefore the reference is disposed of for want of evidence to substantiate the statement of claim.

4. Hence the reference is rejected with no order as to costs. Hence order.

ORDER

Reference is rejected with no order as to costs.

Date: 16.05.2019

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 3 जून, 2019

का.आ. 1018.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स निदेशक, राष्ट्रीय अनार अनुसंधान केंद्र सोलापुर (महाराष्ट्र) एवं उनके कर्मचारी और अन्य के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं.-2, मुंबई के पंचाट (संदर्भ संख्या CGIT-2/59 of 2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 04.06.2019 को प्राप्त हुए थे।

[सं. एल-42012/58/2014-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 3rd June, 2019

S.O. 1018.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT-2/59 of 2014) of the Central Government Industrial Tribunal-cum-Labour Court No.-2 Mumbai, as shown in the Annexure, in the Industrial Dispute between the employers in relation to The Director, National Research Centre for Pomegranate, Solapur (Maharashtra), and their workmen and others which was received by the Central Government on 04.06.2019.

[No. L-42012/58/2014-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI****PRESENT :** M. V. Deshpande, Presiding Officer**REFERENCE NO. CGIT-2/59 of 2014****EMPLOYERS IN RELATION TO THE MANAGEMENT OF****(1) NATIONAL RESEARCH CENTRE FOR POMEGRANATE****(2) M/S. SWADESHI SECURITIES**

The Director,
National Research Centre for Pomegranate,
Near Solapur University,
Solapur (Maharashtra).

M/s. Swadeshi Security,
96, Salgar Vasti,
Dongaon Road,
Solapur (Maharashtra).

AND**THEIR WORKMEN**

Shri Bhimashankar Peerappa Koli,
R/o Dahitane, Post Shelagi,
Tal North Solapur,
Solapur (Maharashtra) – 413001.

APPEARANCES:

FOR THE EMPLOYER : Shri S.P. Chinchwadkar, Advocate

FOR THE WORKMEN : Shri V.R. Deshpande, Advocate

Mumbai, dated the 16th May, 2019

AWARD

1. This is reference made by the Central Government in exercise of powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide Government of India, Ministry of Labour & Employment, New Delhi vide its order No. L-42012/58/2014 – IR (DU) dated 23.07.2014. The terms of reference given in the schedule are as follows :

“Whether the demand of the workman Shri Bhimashankar Peerappa Koli, for asking regulation as an employee of National Research Centre for Pomegranate, Solapur is legal and justified ? If yes to what relief the workman is entitled to ?

2. After the receipt of the reference, both the parties were served with the notices.

3. On going through Roznama it appears that the concerned workman is absent since long. He has not filed affidavit in support of his statement of claim. Today also he is absent hence there is no evidence to substantiate the statement of claim. Therefore the reference is disposed of for want of evidence to substantiate the statement of claim.

4. Hence the reference is rejected with no order as to costs. Hence order.

ORDER

Reference is rejected with no order as to costs.

Date: 16.05.2019

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 3 जून, 2019

का.आ. 1019.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स निदेशक, राष्ट्रीय अनार अनुसंधान केंद्र सोलापुर (महाराष्ट्र) एवं उनके कर्मचारी और अन्य के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं.-2, मुंबई के पंचाट (संदर्भ संख्या CGIT-60 of 2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 06.06.2019 को प्राप्त हुए थे।

[सं. एल-42012/59/2014-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 3rd June, 2019

S.O. 1019.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.CGIT-2/60 of 2014) of the Central Government Industrial Tribunal-cum-Labour Court No.-2 Mumbai, as shown in the Annexure, in the Industrial Dispute between the employers in relation to The Director, National Research Centre for Pomegranate, Solapur (Maharashtra), and their workmen and others which was received by the Central Government on 06.06.2019.

[No. L-42012/59/2014-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI****PRESENT : M. V. Deshpande, Presiding Officer****REFERENCE NO.CGIT-2/60 of 2014****EMPLOYERS IN RELATION TO THE MANAGEMENT OF
(1) NATIONAL RESEARCH CENTRE FOR POMEGRANATE
(2) M/S. SWADESHI SECURITIES**

The Director,
National Research Centre for Pomegranate,
Near Solapur University,
Solapur (Maharashtra).

M/s. Swadeshi Security,
96, Salgar Vasti,
Dongaon Road,
Solapur (Maharashtra).

AND**THEIR WORKMEN**

Shri Tanaji Shamrao Chavan,
R/o Chandrakala Nagar, Plot No. 164-165,
Behind Airport, Majarewadi,
Solapur (Maharashtra) – 413003.

APPEARANCES:

FOR THE EMPLOYER : Shri S.P. Chinchwadkar, Advocate
FOR THE WORKMEN : Shri V.R. Deshpande, Advocate

Mumbai, dated the 16th May, 2019**AWARD**

1. This is reference made by the Central Government in exercise of powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide Government of India, Ministry of Labour & Employment, New Delhi vide its order No. L-42012/59/2014 – IR (DU) dated 23.07.2014. The terms of reference given in the schedule are as follows :

“Whether the demand of the workman Shri Tanaji Shamrao Chavan, for asking regulation as an employee of National Research Centre for Pomegranate, Solapur is legal and justified ? If yes to what relief the workman is entitled to ?

2. After the receipt of the reference, both the parties were served with the notices.
3. On going through Roznama it appears that the concerned workman is absent since long. He has not filed affidavit in support of his statement of claim. Today also he is absent hence there is no evidence to substantiate the statement of claim. Therefore the reference is disposed of for want of evidence to substantiate the statement of claim.
4. Hence the reference is rejected with no order as to costs. Hence order.

ORDER**Reference is rejected with no order as to costs.**

Date: 16.05.2019

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 3 जून, 2019

का.आ. 1020.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स महाप्रबंधक, भारत संचार निगम लिमिटेड, करनाल, हरियाणा और अन्य एवं उनके कर्मचारी के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चंडीगढ़ के पंचाट (संदर्भ संख्या 316/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 23.05.2019 को प्राप्त हुए थे।

[सं. एल-40012/82/2013-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 3rd June, 2019

S.O. 1020.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 316/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Chandigarh, as shown in the Annexure, in the Industrial Dispute between the employers in relation to The General Manager, Bharat Sanchar Nigam Limited, Karnal, Haryana and Others, and their workmen which were received by the Central Government on 23.05.2019.

[No. L-40012/82/2013-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. Singh, Presiding Officer

ID No.316/2013

Registered on:-07.02.2014

Sh. Dharambir Singh S/o Sh. Pane Ram Jogi, VPO: Ballah,
Near Telephone Exchange, Tehsil & Distt. Karnal, Haryana.

...Workman

Versus

The General Manager, Bharat Sanchar Nigam Limited,
Sector 8, Karnal, Haryana.

... Management

AWARD

Passed on: 13.05.2019

Central Government vide Notification No. L-40012/82/2013-IR(DU) Dated 22.01.2014, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

“Whether the action of the management of General Manager, Bharat Sanchar Nigam Limited, Karnal(Haryana) in terminating the services of Shri Dharambir Singh, S/o Shri Pane Ram Jogi, Ex Lineman-cum-Relief the workman is entitled to and from which date?”

1. Both the parties were served with notices. The workman/claimant filed his statement of claim with the averment that he was engaged as Lineman Helper/Generator Operator at Ballah Gaon Exchange by management of Bharat Sanchar Nigam Limited, Karnal from 01.10.2009 and he performed his duty upto 31.07.2010. He rendered his services even on holiday and was paid Rs.3,000/- meanwhile and he was terminated on 30.07.2010 by the management without giving any notice and salary of 10 months for the services rendered by him. The workman had completed more than 240 days of service in relevant calendar year. Claimant/workman has alleged that he has filed the receipt of complaint made by the consumer along with the telephone bill which is tendered to the consumer in respective period along with claim petition.

It is prayed that the management be directed to reinstate the workman into service along with all consequential benefits, back wages and continuity of service.

2. The claim petition has been resisted by the management who filed its reply, alleging therein that claimant has never worked with BSNL on the post of Generator Operator or Lineman as such, there is no relationship of master and servant with the claimant as he had never been engaged on any post nor any wages have been paid directly or indirectly by the BSNL. The claim has been filed on fake ground. There is no iota of truth in the averments made in the claim statement. In fact, claimant wants to take the benefit of certain entries made by him clandestinely with malafide intention to project his case for illegal entries in the service of BSNL. The claimant has illegally assessed the engine register of Ballah Exchange and signed the entries in order to make out a case of his alleged employment with the Nigam during the period October 2009 to 31.07.2010. There is no question of making of any payment of the salary when he was neither engaged nor worked as well as termination of his services without notice on the alleged date on 31.07.2010. The documents attached by the claimant are manufactured by the claimant himself by secretly, forcibly signing the generator register just to make out his employment in the management. In this connection, one Sh. Rajinder Kumar made a complaint on 15.11.2010 that Sh. Dharambir has never worked as Generator Operator and he has made his signature by making wrong entries. Copy of the complaint is attached as Annexure M-1 and subsequent complaint is attached as Annexure M-2 with the written statement. Remaining documents allegedly signed by the subscriber is also false as there is no procedure existing in the BSNL that whenever any fault complaint is received it is to be entered and handed over to the concerned Lineman to rectify the fault. The claimant has committed the criminal offence for tempering with the official record and also manufactured the false documents as such, Hon'ble Court is requested to suo moto lodged a complaint against the claimant for the above offence. It is prayed that claim statement be rejected with heavy cost.

3. In support of his case, the workman appeared in the witness-box and tendered his evidence by way of affidavit Ex.A-1 along with documents marked as W-2 to W-11.

4. In support of the facts alleged in the written statement, respondent-management has submitted the affidavit of witness Sh. Mahabir Singh Tyagi, SDO, BSNL, Asandh, as Ex.MW1/A along with documents Ex.MW1/1 to MW1/2.

5. I have heard Sh. R.P. Rana, Ld. Counsel for the workman and Sh. Anish Babbar, Ld. Counsel for the management and perused the record carefully.

6. Learned counsel of the workman has contended that he has joined the management-BSNL as Lineman Helper/Generator Operator on daily wages on DC rates by the management and had worked from 01.10.2009 to 31.07.2010 and his services were orally terminated on 31.07.2010 without issuing any notice, order without any reason. Learned counsel of the workman has also submitted that conduct of the management regarding the termination of workman from the service is in violation of section 25-F of the Industrial Disputes Act, 1947. It is also submitted that documents filed by the workman shows that workman had worked in the aforesaid period with the management as Lineman Helper-cum-Generator Operator. It is also contended that the documents filed by the workman are indicative of the fact that he served the management throughout his service directly under the supervision and control of the respondent-management as such, he is liable to be reinstated with full back wages.

7. Contrary to this, learned counsel of the management argued that claimant is neither workman nor appointed as Lineman Helper-cum-Generator Operator by the respondent-management for the period from 01.10.2009 to 31.07.2010. It is also contended that there was no relationship of employer and employee between the workman and management as such, respondent-management has no liability towards the workman. Learned counsel has also submitted that documents filed by the claimant as W1 to W11 are false, fabricated and forged as is proved by the complaint made by one Rajinder Kumar an employee of the Telephone Exchange and filed by the witness Mahabir Singh Tyagi as MW1/1 and MW1/2.

8. The first contention regarding the claimant is that whether he comes within the definition of workman as is defined in Section 2(S) of the Industrial Disputes Act, 1947. I may mention that claimant was appointed as Lineman Helper/Generator Operator as per his claim petition and affidavit submitted before the Tribunal. In plain words the claimant was performing his duties as labourer/unskilled worker. He was not in supervisory or administrative post requiring him to perform only administrative duties. While interpreting Section 2(S) Hon'ble Supreme Court in the case of Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Court 2532, has observed as follows:-

"The source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman."

Thus Hon'ble Supreme Court has clarified that the definition of workmen also does not make any distinction between full time or part time employee or a person appointed on contract basis. There is nothing in plain language of Section 2(S) from which it can be infer that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman. In view of the ratio of law enunciated in the above ruling, in my considered opinion the claimant herein admittedly falls within the definition of 'workman' under Section 2(S) of the Act.

9. There is no dispute about preposition of law that onus to prove that claimant was in the employment of management is always on the workman/claimant and it is for the workman to adduce evidence to prove factum of his employment with the management. Such evidence may be in form of receipt of salary or wages for 240 days or record of his/her appointment or engagement for that year to show that he worked with the employer for 240 days or more in a calendar year. In this regard reference may be made to **Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh, (2005) 8 Supreme Court Cases 481 as well as Director Fisheries Terminated Division Vs. Bhikubhai Mehgajibhai Gavda (2012) 1 SCC 47.**

10. There is hardly any dispute with the preposition of law as propounded in the aforesaid case. However, the factual scenario in the present case is that management has totally denied the relationship of claimant with the management as master and servant alleging therein that he is neither appointed by the management nor terminated by the management as is alleged in the claim petition. Initially burden regarding the proof of relationship between employer and employee certainly lies with the claimant/workman for which he has submitted his affidavit Ex.A1 and placed him for cross-examination. This witness has been cross-examined by the learned counsel of the management in which he has accepted that appointment letter was not issued to him by the management and he has no proof for receiving salary from the management. This witness has alleged that he was appointed by Jaswal Singh, SDO and denied the suggestion of the management-counsel that documents produced by him are frivolous. Thus, learned counsel of the management has very cryptically cross-examined the witness and nothing has been asked regarding the documents filed by the witness as W2 to W11. Perusal of these documents reveals that documents Ex.W2 to Ex.W10 are the Photostat copies of certificate issued in the form of letter by the concerned consumer subscribers including Principal Arya Kanya Mahavidyalaya Gurukul, Mor Majra, Karnal with their respective signatures and telephone numbers etc. for the services rendered by the workman. Management witness Sh. Mahavir Singh Tyagi, SDO, has accepted that there was previously telephone number 10749275810 in the name of Vidya Nand Shastri. He has also accepted that there was telephone connection in the name of Arya Kanya Mahavidyalaya Gurukul, Mor Majra, Karnal, and Rajinder Kumar might has sent to the workman for repair of telephone connection whenever necessary. He has also accepted that he cannot say whether workman Dharambir Singh was attending the complaints in respect of the above telephone numbers. He has also accepted that answer is same with regard to documents Marked W-1 to W-10 filed by the workman. Thus, during the cross-examination, the facts alleged by this witness is a proof that he cannot dare to negate the services rendered by the workman expressly. Admittedly, Rajinder Kumar is the employee of the management posted at Ballah Gaon Exchange. It is pertinent to mention that management could not dare to summon the Principal of Arya Kanya Mahavidyalaya Gurukul, Mor Majra, Karnal, who has given certificate regarding the services of the workman rendered at the behest of Rajinder Kumar as is evident from the certificate issued by the Principal with clear signature and telephone number.

11. Learned counsel of the workman has drawn my attention towards the documents Ex.W-11 running 22 pages from 01.10.2009 to 30.07.2010 photocopies of engine register maintained by Lineman Helper-cum-Generator Operator deputed at Ballah Gaon Exchange. There are signatures of the workman Dharamvir Singh in each pages counter signed by the SDO regarding the operation of Generator and use of diesel for the relevant period. The signatures of the SDO and Rajinder Kumar an employee of Exchange has not denied by the management-counsel as well as the witness Mahavir Singh Tyagi, examined by the management. Learned counsel of the management has contended that these entries and signatures are forged and fabricated subsequently by the workman in order to prove that he was employed by the management for the relevant period. In this connection, learned counsel of the management has drawn my attention towards the complaints made by Rajinder Kumar Ex.MW1/1 and Ex.MW1/2 dated 15.11.2010 and 04.10.2010. These documents have been proved by the witness of the management Sh. Mahavir Singh Tyagi. Ex.MW1/2 dated 04.10.2010 reveals that workman Dharamvir Singh was residing near telephone exchange at Ballah Gaon came to him and abused with the allegation that he was not giving any work to the workman. It is pertinent to mention that if the fact alleged in the complaint is true then the alleged accident is one week earlier from the date of the complaint made by Rajinder Kumar. The question arises that why Rajinder Kumar has not made any complaint on the date when he was abused by the workman. In the same way Ex.MW1/1 is a complaint report written by Rajinder Kumar with the averment that on examining Generator Register from January 2008 to July 2010 he found that Dharamvir workman has made his signatures on engine register for rendering his services. He has also written that he has full faith that Dharamvir has made signatures and entries in engine register in his absence illegally as is evident from the pen used by him and Dharambir are different. Naturally question arises before Tribunal that if complaints made by the Rajinder Kumar an employee of the Telephone Exchange of the management is true then what action is taken by the management against the workman? If no action is taken for such a gross misconduct or criminal offence committed by the workman what was

reason behind such inaction by the management? There is nothing on record in the form of explanation of the question framed above. To my mind, plausible reason may be that management had employed the workman as alleged in the claim petition and he made entries and signatures accordingly. Hence, management could not dare to prosecute the workman by lodging F.I.R against him.

12. Furthermore, management has failed to examine Rajinder Kumar, the alleged employee of the Telephone Exchange or SDO Jaswal Singh, who has counter-signed on these papers relating to Engine Register reason best known to the management. It is pertinent to mention that if the Engine Register was in custody of the Rajinder Kumar then how workman managed to make entries and signatures in it. These facts are also not explained by the management which could be explained by examining the Rajinder Kumar along with the concerned original register or SDO Jaswal Singh by the management. Undoubtedly, Rajinder Kumar has written in his complaint that he has faith that the entries are made by the workman Dharambir Singh but it is a settled law that faith howsoever strong it cannot take place of evidence. To my mind, management has knowingly withdrawn Rajinder Kumar or SDO Jaswal Singh for cross-examination in spite of the fact that they may be best witness for the conclusive finding on the issue. The affidavit filed by the workman/claimant is in line with the averments made in the claim petition. He has also filed on record copies of extract of the engine register Ex.W11 from 01.10.2009 to 31.07.2010. In cross-examination, no specific question is asked regarding the completion of 240 days. I may mention that management has not adduced any cogent evidence whatsoever to rebut the case of the management or to substantiate its stand that the workman/claimant was not engaged by the management. It is relevant to mention that witness examined by the management Sh. Mahabir Singh Tyagi has admitted that he does not have any personal knowledge of the case. According to this witness, documents marked Ex.MW2 has been verified by the JTO but entire page has not been verified by the JTO relating to the entries made by the workman. This witness has express his inability to say whether workman Dharamvir Singh was attending the complaint in respect of the above telephone numbers. He has also answered in same way regarding the documentd marked W2 to W10. Thus, the statement given by this witness in his cross-examination has not served any purpose for the facts alleged by the management in its written statement. This witness also has not produced the original entry register Photostat copies which has been submitted by the workman Ex.W11. In these circumstances, this Tribunal is constrained to draw adverse inference against the management under Section 114(g) of the Evidence Act for non-production of the requisite records or examining relevant witness and believe the version of the claimant that he worked with the management for over 240 days before his termination. Equally settled is the position of law that cases regarding the Industrial Disputes Act are to be decided on the basis of the preponderance of probability and not on proof beyond reasonable doubt. Hence, on the basis of the critical analysis of evidence on record, I am of the considered opinion that evidence produced by the workman stand on better footing than management and there certainly existed relationship of employer and employee between the management and workman.

13. Now the vital question arises for consideration is whether termination of the claimant from his services by the management w.e.f. 31.07.2010 is in accordance with the law or in violation of the provisions of Section 25-F of the Act. According to the testimony of the workman/claimant the work of Lineman Helper/Generator Operator on which he was working was of permanent nature and that his services were terminated by the management in violation of Section 25-F of the Act. It is neither the case of the management that any notice or compensation in lieu of notice period was given to the claimant prior to termination of his services w.e.f. 31.07.2010, nor any such evidence has been adduced on record by the management. It is reiterated that the management did not examine any reliable witness to rebut the case of the claimant. In these circumstances, this Tribunal has no hesitation to hold that the services of the claimant were terminated by the management w.ef. 31.07.2009 in violation of the provisions of Section 25-F of the Act.

14. There is long line of decisions of Hon'ble Apex Court as well as of various High Courts that provisions of Section 25-F of the Act are mandatory in nature and termination of the workman from services in derogation of the provisions of Section 25-F of the Act will render action of the management to be illegal and void under the law.

15. Since there is no evidence on record that any valid notice was issued by the management to the workman at the time of termination or in lieu of such notice, any compensation was paid to him, as such action of the management in terminating the services of the workman is held to be illegal and void.

16. Now the residual question is whether the claimant/workman is entitled to any incidental relief of payment of back wages and/or reinstatement of service with full back wages. It is proved on record that claimant was continuously in the employment of the management from 01.10.2009 to 31.07.2010 under its control and supervision.

17. The Hon'ble Apex Court in case "Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya" reported as (2013) 10 SCC 324 has held as under:

- (i) *In case of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.*
- ii) *Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the*

Court of first instance that he was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then I has to plead and also lead cogent evidence to prove that the workman wads gainfully employed and was getting wages equal to the wages he wads drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.”

18. The Apex Court also held that different expressions are used for describing the consequence of termination of a workman's service/employment/engagement by way of retrenchment without complying with the mandate of Section 25-F of the Act. Sometimes it has been termed as ab initio void, sometimes as illegal per se, sometime as nullity and sometimes as non est. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Section 25-F (s) and (b) has the effect of rendering the action of the employer and nullity and the employee is entitled to continue in employment as if his service was not terminated. (Anoop Sharma Vs. Executive Engineer, Public Health Division No.1 Panipat (2010) 5 SCC 497).

19. A Bench of three Judges of the Hon'ble Supreme Court in the case of Hindustan Tin Works Private Limited vs. Employees of Hindustan tin Works Private Limited (1979) 2 SCC 80 held that relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the act of employer is found to be totally illegal and arbitrary, in that eventuality the workman is required to be reinstated, with full back wages. Plain common sense also dictates that the removal of an order terminating the services of workman must ordinarily lead to the reinstatement of the services of the workman along with payment of back wages.

20. However, Hon'ble Apex Court in the case of General Manager, Haryana Roadways Vs. Rudan Singh, reported as 2005 SCC (L & S) 716 observed as under:-

“8. There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors which has to be taken into consideration is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at this age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. A regular service of permanent character cannot be compared to short or intermittent daily wage employment though it may be for 240 days in a calendar year.”

21. Yet, in another latest judgment i.e. District Development Officer Vs. Kanti Lal 2018 LLR 225 while considering the question of reinstatement along with back wages of a daily wagger, who have put two and a half years of service, the Hon'ble Apex Court granted a lump sum compensation of Rs.2.50 lac in lieu of reinstatement. The workman herein was not holding a regular post of Lineman Helper/Generator Operator and he was simply engaged as daily wagger. Having regard to duration of service, it would be in the interest of justice and fair play if compensation of Rs.1,00,000/- be awarded as lump sum compensation to the workman. Accordingly, the reference is answered by holding that action of the management-BSNL in terminating the service of workman Dharamvir Singh is illegal and an amount of Rs.1,00,000/- is ordered to be paid as lump sum compensation to the said workman by the management and in case, this amount is not paid within one month from the date of publication of the award, the workman shall be entitled to the said amount with 6% interest from the date of making of the reference till realisation.

22. Let copy of the award be sent to the Central Government for publication of the same as required under Section 17(2) of the Act.

A. K. SINGH, Presiding Officer

नई दिल्ली, 3 जून, 2019

का.आ. 1021.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स निदेशक, सरदार वल्लभभाई राष्ट्रीय प्रौद्योगिकी संस्थान, इचानाथ, सूरत (गुजरात) और अन्य एवं उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, अहमदाबाद के पंचाट (संदर्भ संख्या 57/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 22.05.2019 को प्राप्त हुए थे।

[सं. एल-40012/16/2009-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 3rd June, 2019

S.O. 1021.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 57/2011) of the Central Government Industrial Tribunal-cum-Labour Court-1 Ahmedabad, as shown in the Annexure, in the Industrial Dispute between the employers in relation to The Chief Post Master General, D/o Post, Gujarat Circle, Khanpur, Ahmedabad (Gujarat) and Others, and their workmen which were received by the Central Government on 22.05.1019.

[No. L-40012/16/2009-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD**

Present : Pramod Kumar Chaturvedi, Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,

Dated 29th April, 2019**Reference: (CGITA) No. 57/2011**

1. The Chief Post Master General,
D/o Post, Gujarat Circle, Khanpur,
Ahmedabad (Gujarat) – 380001

2. The Sub-Record Officer,
RMS, AM Division,
Mehsana (Gujarat)

...First Parties

V/s

The General Secretary,
Association of Railway and Post Employees,
4, Duplex Apartment, Nehrupark, Vastrapur,
Ahmedabad (Gujarat) – 380007

...Second Party

For the First Party : Shri P.M. Rami

For the Second Party : Shri R.C. Pathak & Shri Chintan Gohel

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/16/2009–IR(DU) dated 11.07.2011 referred the dispute for adjudication to the Central Government Industrial Tribunal cum Labour Court, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Chief Post Master General, Ahmedabad in terminating the services of Shri Nareshkumar Manilal Parmar w.e.f. 20.07.1998 is legal and justified? What relief the workman is entitled to?”

1. The reference dates back to 11.07.2011 and received on 25.07.2011 from Ministry of Labour and Employment, New Delhi for adjudication and passing the award.
2. In response to the notice issued to the parties, the second party workman submitted the statement of claim alleging that he was appointed by the first party The Chief Post Master General, D/o Post, Gujarat Circle, Khanpur, Ahmedabad and The Sub-Record Officer, RMS, AM Division, Mehsana, hereinafter referred to as ‘first party’ on 27.05.1996 after inviting the names from employment exchange Mehsana and conducting his interview on 13.05.1996. Since then he has been working diligently and satisfactorily till 20.07.1998 the date on which his services were terminated without following the due procedure of law i.e. without giving notice and notice pay. He has also alleged that after his termination, some other persons were appointed. The first party has also adopted exploitative tactics to engage temporary staff continuously. The first party is in the habit of engaging the workmen temporarily to deprive them the benefits of uniform, provident fund, gratuity, bonus etc. He moved number of representations for re-employment but to no result. Therefore, he has prayed for reinstatement of service with back wages along with all consequential benefits.
3. The first party submitted written statement Ex. 6 stating that the workman’s submission that his services were terminated on 20.07.1998 is false. He was not appointed after following the departmental proceedings of recruitment. It is true that his name was sponsored by the employment exchange at serial no. 27/40 vide letter no. CGM/104/96/907 dated 04.05.1996. In response to filling up the post of part time water carrier cum sweeper, he was simply called on 21.05.1996 by the SRO, Mehsana vide letter dated 13.05.1996. After completing the recruitment process, the names of the selected candidates were intimated to employment exchange by SRO Mehsana vide letter dated 08.04.1997 against the post for which his name was sponsored by the employment exchange. Thus the services of the workman were terminated w.e.f. 22.07.1998 after completing the process of regular recruitment. The workman was never selected by due procedure. His services were casual in nature and were terminated as soon as the regular appointment was made. Therefore, the reference has no force and liable to be dismissed with no cost.
4. The workman moved an application for production of documents which appears to have not been pressed as the workman himself filed documents vide list Ex. 10 detailed therein.
5. On the basis of the pleadings, the following issues arise:
 - i. Whether the action of the management of Chief Post Master General, Ahmedabad in terminating the services of Shri Nareshkumar Manilal Parmar w.e.f. 20.07.1998 is legal and justified?
 - ii. To what relief, if any, the workman is entitled?
6. **Issue No. i and ii:** As both the issues are interrelated, therefore, are decided together. The burden of proof of these issues lies on the second party workman who submitted his affidavit Ex. 21 reiterating the averments made in the statement of claim but in his cross-examination, he has admitted that he was a temporary part time casual worker engaged on 03.05.1996. He used to work as extra department assistant and was retrenched on 31.08.1998. He was receiving the wage at the rate of Rs.700/- to Rs. 750/- per month. He also admitted that he was retrenched when permanent workman joined on his place. He was not receiving the service benefits of regular employee.
7. The first party submitted the affidavit Ex. 22 of one Hardik B. Gadhavi reiterating the averments made in the written statement and in his cross-examination, he has stated that this workman was temporarily engaged through employment exchange but was terminated as soon as the regular employee joined on the post.
8. I considered the arguments of both the parties and perused the evidence available on the record. It is an admitted fact that this workman was engaged as a temporary casual worker and was terminated after filling up the vacancy by a due procedure of recruitment. Thus he deserves no relief. Both the issues are decided accordingly.
9. The award is decided accordingly.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 3 जून, 2019

का.आ. 1022.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स निदेशक, सरदार वल्लभभाई राष्ट्रीय प्रौद्योगिकी संस्थान, इचानाथ, सूरत (गुजरात) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, अहमदाबाद के पंचाट (संदर्भ संख्या 04/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 22.05.2019 को प्राप्त हुए थे।

[सं. एल-42011/162/2012-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 3rd June, 2019

S.O. 1022.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 04 of 2013) of the Central Government Industrial Tribunal-cum-Labour Court-1 Ahmedabad, as shown in the Annexure, in the Industrial Dispute between the employers in relation to The Director, Sardar Vallabhbhai National Institute of Technology, Ichhanath, Surat (Gujarat) and Others, and their workmen which were received by the Central Government on 22.05.1019.

[No. L-42011/162/2012-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD**

Present : Pramod Kumar Chaturvedi, Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 29th April, 2019

Reference: (CGITA) No. 04/2013

The Director,
M/s. Sardar Vallabhbhai National Institute of Technology,
Ichchanath,
Surat (Gujarat)

...First Party

V/s

1. The Secretary,
Surat Jilla Bharatiya Mazdoor Sangh,
B/206, Capital Complex, Beside Pratik Row House,
Hany Park Road, Adajan,
Surat (Gujarat)

2. The Secretary,
Gujarat Audhyogik Kamdar Mahamandal,
492/2950, Gujarat Housing Board,
Bapunagar Cross Road,
Ahmedabad (Gujarat)

...Second Parties

For the First Party	: Shri Jayesh M. Patel
For the Second Party No. 1	: None
For the Second Party No. 2	: Shri Hitesh D. Katharotiya

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-42011/162/2012–IR(DU) dated 21.01.2013 referred the dispute for adjudication to the Central Government Industrial Tribunal cum Labour Court, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the establishment of Sardar Vallabhbhai National Institute of Technology, Surat falls under the definition of ‘Industry’ as per the provisions of Industrial Disputes Act, 1947? If yes, whether the demand of the Surat Jilla Bharatiya Mazdoor Sangh, Surat for regularisation of the workmen Shri N.B. Rathod & 185 others in the establishment of Sardar Vallabhbhai National Institute of Technology, Surat is legal, proper and just? If so, what relief these concerned workmen are entitled to?”

1. The reference dates back to 21.01.2013 and received on 31.01.2013 from Ministry of Labour and Employment, New Delhi for adjudication and passing the award.

2. After issuing notice to the parties, the second party no. 2 submitted the statement of claim Ex. 9 on 18.07.2017 but the first party The Director, M/s. Sardar Vallabhbhai National Institute of Technology, Ichchanath, Surat, hereinafter referred to as ‘first party’ has not preferred to submit the written statement. On 16.01.2017, the second party moved an application Ex. 8 for impleading Gujarat Audhyodik Kamdar Mahamandal as second party union in place of ‘Surat Jilla Bharatiya Mazdoor Sangh’.

3. The second party union in his statement of claim has alleged that the workman detailed in the application Ex. 8 have rendered ranging from 2 years to 48 years and despite serving for such a long period have been denied the benefits of making them permanent workmen of the first party also denying the benefit of equal pay for equal work. He has further alleged that still they have been serving as casual labour. Thus the first party has been indulging in unfair labour practice under Item No. 10 of the 5th Schedule of Industrial Disputes Act, 1947. It is further alleged that the workmen detailed in the annexure A have been receiving daily wages of Rs.193/- to Rs.300/- per day whereas the permanent workmen have been getting a salary of Rs.30000/- per month despite discharging same nature of duties as the permanent workmen have been performing. The Supreme Court in Secretary State of Karnataka V/s Uma Devi, 2006 (4) SCC 1 and Umrula Gram Panchayat V/s Secretary, Municipal Employees Union has held that as under:

“13. Further, Section 25 (T) of the Industrial Disputes Act clearly states that unfair labour practice should not be encouraged and the same should be discontinued. In the present case, the principle ‘equal work, equal pay’ has been violated by the appellant Panchayat as they have been treating the concerned workmen unfairly and therefore, the demand raised by the respondent Union needs to be accepted. The High Court has thus, rightly not interfered with the award of the Labour Court as the same is legal and supported with cogent and valid reasons.”

“16. The reliance placed by the leaned senior counsel for the appellant upon the decision of this Court in Secretary, State of Karnataka and others V/s Umadevi and others, 2006 (4) SCC 1, does not apply to the fact situation of the present case and the same cannot be accepted by us in the light of the cogent reasons arrived at by the courts below.”

Thus on the basis of the aforesaid judgements, the second party union has alleged that the first party has indulged in unfair labour practice under Section 2 (r a) A of the Industrial Disputes Act read with Item No. 10 of 5th Schedule of the Industrial Disputes Act.

4. It is further alleged that these workmen have been working as helper, clerk, computer operator, lab assistant, network security, office assistant, fitter, cashier, gym instructor, plumber, carpenter, electrician, mistries, wiremen, drivers, cooks, sweepers, cleaners and mazdoors. It is noteworthy that large number of such posts are vacant and these workmen having eligible qualifications have been denied the benefit of granting permanent status of employment as employees of the first party. They have been working more than 240 days in all the calendar years and therefore, are entitled for regularisation. Thus the second party union has prayed for declaring the first party indulged in unfair labour practice under Section 2 (r a) of the Industrial Disputes Act and issue directions to the first party to stop indulging in unfair labour practice and order the first party to give all the workmen the benefits of a permanent employee.

5. As the first party despite service and submitting the vakalatpatra Ex. 4 of his advocate Jayesh M. Patel and Shashikant B. Goswami, did not prefer to submit the written statement. Therefore, the Tribunal on 03.04.2018 passed order to proceed the case ex-parte against the first party.

6. The second party union submitted the affidavits Ex. 11 of workmen Pravinbhai Amratbhai Rana, Ex. 12 of Gulabbhai Samjibhai Gamit, Ex. 13 of Vipulkumar Dhansukhbhai Patel, Ex. 14 of Pravinkumar Amratlal Rana, Ex. 15 of Dilip Amrutbhai Patel, Ex. 16 of Ashwinbhai Rameshbhai Solanki, Ex. 17 of Ketankumar Natwarbhai Sailor, Ex. 18 of Jiteshbhai Dhanjibhai Arthania, Ex. 19 of Harishbhai Jayantibhai Gamit, Ex. 20 of Surti Manojkumar Gopalbhai, Ex. 21 of Jigisha Bharatbhai Bhuraiya, Ex. 22 of Sushila Natwarlal Jariwala, Ex. 23 of Jignesh Gangajibhai Gamit, Ex. 24 of

Anilbhai Ramanlal Patel, Ex. 25 of Parmar Rajendrabhai Nasinbhai, Ex. 26 of Minaben Jayeshbhai Rathod, Ex. 27 of Balvantbhai Dhanjibhai Umarvansi and Ex. 28 of Prashant Navinchandra Umariya reiterating the averments made in the statement of claim.

7. It is noteworthy that all the affidavits of the aforesaid workmen bears the signature of workmen as well as the Director, M/s. Sardar Vallabhbhai National Institute of Technology, Surat but despite the same, the first party has not contested the case.

8. The second party union Gujarat Audhyogik Kamdar Mahamandal submitted an application Ex. 29 stating that they have contested the case only on behalf of the 23 workmen listed below:

Serial No.	Name of Workman
1	Pravinbhai Amratbhai Rana
2	Gulabbhai Samjibhai Gamit
3	Vipulkumar Dhansukhbhai Patel
4	Dilip Amrutbhai Patel
5	Ashwinbhai Rameshbhai Solanki
6	Ketankumar Natwarbhai Sailor
7	Jiteshbhai Dhanjibhai Arthania
8	Harishbhai Jayantibhai Gamit
9	Jigisha Bharatbhai Bhurainya
10	Sushila Natwarlal Jariwala
11	Jignesh Gangajibhai Gamit
12	Anilbhai Ramanlal Patel
13	Prashant Navinchandra Umariya
14	Parmar Rajendrabhai Nasinbhai
15	Balvantbhai Dhanjibhai Umarvansi
16	Minaben Jayeshbhai Rathod
17	Avadhesh Prasad Tiwari
18	Mukesh Limjibhai Gamit
19	Hitendra Gamit
20	Ajay Godara
21	Neelam Godara
22	Rishiraj Singh
23	Hariprasad Mishra

9. Thus the reference is fit to be allowed and this Tribunal disposed of the reference with the observation as under: “the establishment of Sardar Vallabhbhai National Institute of Technology, Surat falls under the definition of ‘Industry’ as per the provisions of Industrial Disputes Act, 1947 and the demand of the Surat Jilla Bharatiya Mazdoor Sangh, Surat/ Gujarat Audhyodik Kamdar Mahamandal for regularisation of the workmen Shri N.B. Rathod & 185 others in the establishment of Sardar Vallabhbhai National Institute of Technology, Surat is legal, proper and just.”

10. Therefore, the first party The Director, M/s. Sardar Vallabhbhai National Institute of Technology, Ichchanath, Surat, is directed to give the benefit to the aforesaid 23 workmen equivalent to the benefits of permanent employees of the Institute within 60 days from the publication of the award.

11. The award is passed accordingly.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 3 जून, 2019

का.आ. 1023.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स अधीक्षक, डाक घर, हमीरपुर डिवीजन, हमीरपुर, (एच.पी.) और अन्य एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चंडीगढ़ के पंचाट (संदर्भ संख्या 322/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 17.03.2019 को प्राप्त हुआ था।

[सं. एल-40012/85/2013-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 3rd June, 2019

S.O. 1023.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 322/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Chandigarh, as shown in the Annexure, in the Industrial Dispute between the employers in relation to The Superintendent of Post Offices, Hamirpur Division, Hamirpur (HP) and Others, and their workmen which were received by the Central Government on 17.03.2019.

[No. L-40012/85/2013-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. Singh, Presiding Officer

ID No. 322/2013

Registered on 07.02.2014

Sh. Pawan Kumar, S/o Late Sh. Vam Dev, Village Dulehera,
Tehsil & Distt. Hamirpur (HP).

...Workman

Versus

1. Superintendent of Post Offices, Hamirpur Division, Hamirpur (HP)

2. Postmaster, Head Post Office, Hamirpur (HP)

... Management

AWARD

Passed on:-15.02.2019

Central Government vide Notification No. L-40012/85/2013-IR(DU) Dated 22.01.2014, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

“Whether action of terminating the service of Sh. Pawan Kumar, GDSMP w.e.f. 29.10.2011 by Senior Superintendent of Post Offices, Hamirpur Division, Hamirpur (H.P.) is legal, just and valid? If not, to what relief the workman is entitled to and from which date?”

1. The facts, in brief, are that Sh. Pawan Kumar, workman has alleged in his claim petition that his father was working as Postman and he expired during his service but his request was rejected vide order dated 13.09.2004 for compassionate appointment on Group-C and Group-D post as there is no vacancy under 5% of direct recruitment in Group-C and D categories. Ultimately, the workman was engaged as Mail Peon on daily wage basis w.e.f. 21.08.2006 and worked with the management for more than 5 years and have been completed more than 240 days in each calendar year before the termination of services. The management on 29.10.2011 orally terminated his services without assigning any reason and violating the settled provisions of Section 25-F of the Industrial Disputes Act, 1947 without giving one month notice and retrenchment compensation. Thus, the order is not legal and is not sustained by law. Legally under industrial law, workman is completed 240 day in the management is deemed to be permanent. The workman is unemployed from the date of impugned termination and has not gainfully employed from the date of termination and he is liable to be reinstated in service with full back wages.

2. Management filed written statement, pleaded that workman was only engaged to work as outsider paid substitute in place of Sh. Balak Ram, Gramin Dak Sewak(GDSMP) at his own risk and responsibility for different intervals during the period from 21.08.2006 to 28.10.2011. It is also alleged that substitute has no legal right as far as regularization in the department is concerned. It is further submitted that substitutes have no legal claim on the basis of having worked continuously. Management has denied the facts alleged in the claim petition with the additional averments that he was never given any appointment by the department as alleged by the workman. Substitute has no legal rights as far as regularization in the department is concerned in view of Annexure R-1 and R-2. It is admitted that father of workman Sh. Vam Dev was serving as regular Postman in Hamirpur Head Post Office, who expired on 20.10.2003. Management has also alleged that workman was engaged by Sh. Balak Ram at his own risk and responsibility from time to time being 5 hours duty and not for full day. On joining the regular incumbent, the services of the workman/complainant was terminated on 29.10.2011 and there was no need of giving him notice prior to his termination as he was engaged on the understanding that he will be discharged from service on the joining of regular incumbent. The contention of the workman regarding 240 days is not applicable as per observation of Hon'ble High Court in Para 15 of the judgment, Annexure R-2 with the reply. As per Director General's Instructions published in Swamy's Compilation of Service Rules for Postal Gramin Sewaks below Rule 7 of GDS(Conduct and Engagement)Rules that in the case of Devika Guha v/s Union of India, Supreme Court has also not recognized for the regularization to the substitutes and he has no legal claim and he did not come within the definition of workman. He could not regularize without following prescribed procedure or recruitment. It is prayed that workman is not entitled to any relief as prayed by him and the claim petition is being devoid of merit and liable to be dismissed.

3. The workman Sh. Pawan Kumar has submitted his affidavit Ex.A-1 as evidence and prove the copies of attendance register Ex.A-2. He has also accepted that he was kept as a substitute in place of regular employee and denied the suggestion that he did not completed 240 days of service.

4. Management has examined Sh. Bali Ram, Sr. Superintendent of post offices, Hamirpur Division Hamirpur (H.P.), who has filed his affidavit Ex.R-1 and Annexure R-1 to R-5 attached with the affidavit.

5. I have heard Sh. R.P. Rana, Ld. Counsel for the workman and Sh. Sanjeev Sharma, Ld. Counsel for the management and perused the file carefully.

6. Before averting to the argument advanced by the party's counsels, it will be desirable to mention the admitted facts between the parties. It is not disputed between the parties that workman rendered his services to management as substitute and this fact is admitted by the workman Pawan Kumar in his cross-examination. It is also not disputed that he worked from 21.08.2006 to 28.10.2011 with management with some brakes. This is also admitted fact that neither any notice is issued to workman before his retrenchment or termination nor any compensation is given in the notice. Thus, question remains to be seen whether workman has any legal right as substitute employee which is enforceable in Law.

7. The appointment of Extra Departmental personal is peculiar to the Post and Telegraph Department. They are governed by the Posts and Telegraphs Extra Department Agents(Conduct and Service)Rules along with notifications or circulars issued by Competent Authority therein. Learned counsel of workman has drawn my attention to Clause(d) of notification No.17-115/2001-GDS Government of India Ministry of Communications & IT Department of Posts which runs as follows:-

d) No substitute arrangement shall continue beyond one year. Hence regular/alternative arrangements must be made during the period beyond 180 days to ensure this. If for any unavoidable reason a substitute arrangement is required to be continued beyond one year, specific approval of the Head of Circle will be necessary for reasons to be recorded by the concerned authority.

8. On the strength of above provision learned counsel of workman contended that management had not taken specific approval of the Head of Circle while workman has served uninterruptedly even beyond one year. The workman has specifically stated in his affidavit filed as evidence that he worked more than five years regularly. This fact does not found support with the copies of attendance sheets attached herewith. Perusal of the attendance sheets reveals that he had not assigned work in several intervening months. But it reveals that he had work since August 2010 to July 2011 and onwards months with interruption. It is also relevant to mention that workman had work along with Balak Ram in several months as substitute G.D.S. Thus, position which emerges from copies of attendance register A-2 is very clear and it denotes that workman had rendered his services as substitute in place of Balak Ram as well as others for more than a year continuously without any approval of Head of Circle as require in clause(d) of notification dated 18.08.2001 Annexure R-1.

9. Thus, the position which emerges from the above discussion is very much clear that workman has rendered his services for more than 240 days in preceding year of his alleged retrenchment/termination as a substitute of Balak Ram or other G.D.S.

10. In fact, as per procedure when an Extra Departmental Agent appointed by the department proceed of leave such agent is permitted to make temporary arrangements by appointing any one of his choice as a substitute until he returns from the leave. The substitute appointment is sporadic depending on the period during which the regular employee is on leave for whatsoever reason. Having regard to the nature of the Extra Departmental Agents when they apply for leave, they have to give the name and particulars of the substitutes who will discharge their duties during the leave period. Substitutes are not made by the department but by the Extra Departmental Agents themselves subject to approval made by the department. Learned counsel for the management has drawn my attention towards the applications Annexure R-3 an applications dated 21.08.2006, 24.11.2006, 18.12.2009, 31.03.2010, 17.06.2010, 14.09.2010, 13.12.2010, 14.03.2011, 11.06.2011, 18.08.2011 and 20.10.2011 of Balak Ram for permission to substitute Pawan Kumar workman in his place during his absenting period. Thus, it is clear and proved that workman Pawan Kumar was rendered his services not an employee of management but as nominee of Balak Ram and some others. It is also pertinent to mention that the original incumbent and the applicant/workman as such, is not entitled for any termination notice as per the EDDA Rules. The learned counsel for the workman could not place any rule before me that any notice of termination under the rules is required before retrenchment by management.

11. Learned counsel for the workman has drawn my attention towards the provision of Section 25 of the Industrial Disputes Act, 1947 which mandate that if a workman has rendered his services for more than 240 days in a preceding year of his termination then notice is mandatory and compensation in lieu of the notice is also required to be given to the workman as is specifically mentioned in the aforesaid section. The management-counsel argued that the provision of Section 25 of the I.D. Act is not applicable in case in hand as there is no such specific provision regarding the retrenchment/termination by the management. It is submitted by the learned counsel that there is no such provision of issuing a notice to a person who is substitute of any other employee of the management as such, before his termination or retrenchment. In this connection, learned counsel has drawn my attention to the judgment of Apex Court in B.N. Sinha vs. Union of India, AIR 1998, SC 2600, where it is observed that the Courts and Tribunals should not attempt to legislate on a subject which was not of its business and neither the rule of statutory interpretation nor rules relating to interpretation of subordinate legislation empower any judicial or quasi judicial body to apply the law to a situation or object which was not completed by the legislature while making a Law or by the government while making the Rule. The Courts or Tribunals have no power to override the provisions of the Rules on sympathetic consideration regarding the employment. In view of the above discussion and legal proposition, provision regarding issuance of notice likewise in Section 25 of the ID Act is not mandatory in dispute in case and in dispute in hand. Hence, to my mind, the workman being not an employee of the management is neither required such type of notice nor compensation as required under Section 25 of the Industrial Disputes Act, 1947.

12. The Hon'ble Supreme Court while dealing with the appeal against the order of Central Administrative Tribunal Calcutta Bench, regarding the entitlement of substitute Extra Departmental Agent has observed in the case of Union of India and Another Vs. Devika Guha and others J.T. 2000(7) Supreme Court, page 473 that claim on behalf of the substitute ordinarily is not maintainable as there cannot be legal claim on the basis that they have worked for 180 days or more continuously. However, Hon'ble Supreme Court has held that even if they have worked for a long time continuously, their cases could be appropriately considered by the Department for absorption. Thus, it is up to the management to absorb the claimant looking his services rendered to the department. This Tribunal is of the view that management will honour the observation of Hon'ble Supreme Court in letter and spirit if possible in given circumstances.

13. This Tribunal is of the firm view that the claimant/workman is not entitled for any relief. In result, there is no merit in the case and the same is liable to be dismissed.

A. K. SINGH, Presiding Officer

नई दिल्ली, 3 जून, 2019

का.आ. 1024.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स निदेशक, राष्ट्रीय संस्थान समुद्रशास्त्र, डोना पाउला, गोवा एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, मुंबई के पंचाट (संदर्भ संख्या CGIT-2/83 of 2009) को प्रकाशित करती है जो केन्द्रीय सरकार को 26.04.2019 को प्राप्त हुआ था।

[सं. एल-42012/21/2007-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 3rd June, 2019

S.O. 1024.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT-2/83 of 2009) of the Central Government Industrial Tribunal-cum-Labour Court-2 Mumbai, as shown in the Annexure, in the Industrial Dispute between the employers in relation to The Director, National Institute of Oceanography, Dona Paula, Goa, and their workmen and others, which was received by the Central Government on 26.04.2019.

[No. L-42012/21/2007-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI****PRESENT :** M. V. Deshpande, Presiding Officer**REFERENCE NO. CGIT-2/ 83 of 2009****EMPLOYERS IN RELATION TO THE MANAGEMENT OF M/S. NATIONAL INSTITUTE OF OCEANOGRAPHY**

The Director,
M/s. National Institute of Oceanography,
Dona paula, Goa.

AND**THEIR WORKMEN**

Shri Rohidas Harichand Naik & 4 others,
C/o. All India Trade Union Congress (AITUC),
2nd floor, Velho's Building,
Opp. Municipal Gardan,
Panaji – 403 001.

APPEARANCES:

FOR THE EMPLOYER : Mrs. Anil Kumar, Advocate

FOR THE WORKMEN : Mr. Suhas Naik, Advocate

Mumbai, dated the 12th March, 2019.**AWARD**

1. This is reference made by the Central Government in exercise of powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide Government of India, Ministry of Labour & Employment, New Delhi vide its order No. L-42012/21/2007 – IR (DU) dated 23.07.2007. The terms of reference given in the schedule are as follows :

“Whether the action of the management of M/s. National Institute of Oceanography, in terminating the services of their workman Shri Rohidas Harichandra Naik, Milafrina Nunes, Sarita Tengali, Shaban Azam and Sameer Kambli w.e.f. 1.10.2006 is legal and justified ? If not, to what relief the workmen are entitled to ?“

2. After the receipt of the reference, both the parties were served with the notices. They appeared through their respective representatives.

3. The concerned workmen have filed statement of claim Ex.5. According to the concerned workmen they were working in the A/cs. Dept. of National Institute of Oceanography [NIO] at Dona paula Goa. They were performing the following duties.

- a) Cheque writing
- b) Making entries in Cash Book
- c) Making entries on Ledger Book.
- d) Passing of Bills like contingencies, suppliers, salary, contractors etc.
- e) Preparation of Outstanding Balance Statement.
- f) Sending Junior and Senior Research Fellows' Statement.
- g) Reconciliation of Bank Returns.
- h) Tallying the General Provident Fund Broad Sheet.
- i) Preparing of UC (of Project)

4. It is the case of the concerned workmen that they were recruited directly by NIO by following due process and also by conducting their written statement, oral test and interview after following due process of selection. They were recruited as A/cs. Clerks since the year Jan. '94 onwards. Their recruitment was done under Central Govt. Service Rules. They have worked for more than 8 years of continuous service. Their work was supervised & controlled by Senior Finance A/cs. Officers of NIO. They were reporting to Head of A/cs. Dept. of NIO. However, suddenly on 1.10.06, the first party without serving written notice of termination and without conducting any departmental enquiry terminated their services. Therefore being aggrieved with the decision of NIO the concerned workmen raised industrial dispute on 13.11.06 demanding immediate reinstatement, full back wages, continuity in service. The dispute was not resolved across the table amicably. The failure of the proceedings was reported on 14.3.07. After failure report the Central Govt. has referred the dispute to this tribunal. The concerned workmen are therefore asking to declare that the oral termination of their services is illegal, unjust & bad in law. They are therefore asking for reinstatement, back in service of NIO with full back wages, continuity in service and all other consequential benefits.

5. The first party management resisted claim by filing written statement Ex.12 contending therein that first party is not an industry as defined under the provisions of I.D. Act. The reference is therefore not maintainable. The first party is not covered under the provisions of I.D. Act, tribunal as no jurisdiction to try and adjudicate the present reference.

6. It is then contended by the first party that it is one of the constituent laboratory of the Council of Science and Industrial Research under the Govt. of India referred to as CSIR. CSIR management is an autonomous body and a society registered under the Societies Registration Act. The management comes under the administrative control of Ministry of Science, Technology and Earth Sciences. CISR is headed by Director General Council, has its governing body with Prime Minister of India as its President. As such CISR / NIO are not indulged in activity of business, trade & manufacturing. It is merely a research institute discharging his functions with domestic enterprises than a commercial enterprises. Research conducted by it is not for the benefit and use of it. As such CISR / NIO do not come within the definition of industry as per section 2 (j) of I.D. Act.

7. It is then contended by the first party that second party workmen are neither employees of NIO nor they were designated as A/cs. Clerk of NIO. They were awarded work on quantum basis under sponsored project. In the said sponsored project they were engaged for specified period and for specified amount to be paid on pro-rata basis after due certification of their claim by respective project leaders. This award of work on need cum quantum basis was liable to be terminated at any time without assigning any reason. The concerned workmen were not engaged on behalf of CISR. There is no master servant relationship between first party and the concerned workmen. The work in A/cs. section and other allied works were out-sourced to outside agency i.e. M/s. S. P. Bhandari & Associates, C.A. During that period second party workmen were working under the administration of the said agencies to whom the services were out-sourced. Payment to them were made by the out-sourcing agencies. They were well aware that the proposal of out-sourcing of their services to the agency would come to an end on 30.09.06. They were on the role of the agency during the period from April '04 to Sept. '06 to whom the services were out-sourced by NIO and were not under the administrative control of first party.

8. It is thus denied by the first party that the second party workmen were continuously working with NIO under the supervision of officers of NIO. As such the claim of the concerned workmen that they are employed by the first party is not admitted. The first party has thus sought rejection of the reference.

9. Second party workmen by filing rejoinder Ex.13 reiterated that they were performing all nature of duties which are spelt out in the statement of claim besides assisting the staff of NIO.

10. Following issues are framed at Ex.18. I reproduce the issues along with my findings thereon for the reasons to follow:

Sr. No.	Issues	Findings
1	Whether the NIO is 'industry' as defined under Industrial Disputes Act ?	No
2.	Whether the party no.2 is workman under Section 2 (s) of the Industrial Disputes Act and whether there exist relation of employee-employer between party no.2 and party no.1 ?	No
3.	Whether the party no.2 is entitled to reinstatement with back wages as prayed for ?	No
4.	What relief the party no.2 is entitled to ?	No
3.	What Order ?	As per final order

Reasons

Issue No.1.

11. So far this issue is concerned, the reference is made by the first party management to various judgments in order to show that the first party is merely a research organization under the Ministry of Science and Technology and the service conditions of the employees are governed by the Central Civil Service Rules. Reference is made to case No. EAK No. 768/87 UP No. 4432 / 1983 M. Parshwarao Pillia V/s. CSIR, New Delhi & Ors. wherein it has been observed that CSIR is not an industry. In para 5 of the said judgment reliance was placed on the ruling of Allahabad HC in Ramesh Chandra V/s. Union of India – 1981 – LAB – IC – 781. It has been observed by the Hon'ble HC while applying criteria laid down by the Hon'ble S.C. in Bangalore Water Supply that the National Sugar Institute being predominantly a research institute and its object being device of ways and means of economising, sugar production and means of working of the sugar mills efficiency, could not be held to be an industry.

12. The reference is also made to the decision in case of industrial dispute No. 112 / 1995 wherein it has been observed that the management of M/s. National Environment of Engg. Research Institute is not covered within the definition of industry. The reference is made in this decision to the decision in case of Physical Research Laboratory V/s. K.G. Sharma – AIR 1997 – SC – 1855 wherein it has been observed that Physical Research Laboratory is engaged in pure research work. Neither from the nature of its organization nor from the nature & character of activity carried out by it, it can be said to be an understanding analogist to business or trade. It has been held that institution discharging government functions and as such a Physical Research Laboratory was not held to be an industry even though it is carrying on the activity of research in systematic manner with the help of employees.

13. Reliance is also placed on the decision in case of Suresh Kumar Mishra V/s. Council of Scientific & Industrial Research, New Delhi wherein the question was whether the Council of Scientific & Industrial Research in short CSIR or its unit Central Drug Research Institute is an industry within the meaning of section 2 (j) of I.D. Act and it was held that CSIR and its units CDRI is not an industry within the meaning of section 2 (j) of I.D. Act.

14. Here in the instant case also, it is the contention of first party that it is one of the constituent laboratory of CSIR which is a autonomous body and a society registered under Societies Registration Act. The functions of the council among other things were to implement the resolution passed by the Legislative Assembly and as such CSIR / NIO are not indulged in any activity of business, trade or manufacturing. It is merely an institute discharging its function with a domestic enterprises than a commercial enterprises.

15. Considering the facts and above cited decision, it has to be said that first party i.e. management of National Institute of Oceanography is not an industry and hence tribunal has no jurisdiction to entertain the present reference. Issue No.1 is answered accordingly.

Issue No.2.

16. From the testimony of Rohidas [Ex.22] / Ms. Shabana Azam [Ex.33], it reveals that they were recruited directly by NIO by following due process and also conducting their written test, oral test and interview and after following the due process of law. But their cross examination clearly blows up their versions especially when they have admitted that they do not have any document in that respect or in respect of recruitment. There is no document on record to show that they were recruited after advertisement and interview. There is no document on record to show that they have made

application for their recruitment. On the contrary they have admitted in their cross-examination that they were getting payment through C.A. and for that they never made any complaint during the period from 2004 to 2006. Admittedly, there was no PF deductions and no any termination letter was given to them by NIO or otherwise they have not received any termination letter from NIO.

17. On the contrary, it has come on record that the concerned workmen were engaged by one M/s. S. P. Bhandari & Associates, C.A. who were given the contract for the work relating to computerization of a/c. / impact and data entry operation of a/c. section. The said contract was awarded by the work order. When it is admitted position that salaries of the concerned workmen where PF & other benefits were paid by the contractor M/s. S. P. Bhandari & Associates, C.A. and on the contrary there is no document to show that they were recruited by due process of law and that their services were mere terminated by NIO then the fact remains that there exists no relationship of employer and employee between the first party and the concerned workmen.

18. So far documents are concerned, the first party relied upon the documents to show that NIO is part of council of CSIR and the objectives of NIO is released by CSIR. Booklet showing that CSIR provisional 2005 relating to laboratory is a governing body means and agenda and as such there was a contract between first party and M/s. S. P. Bhandari & Associates, C.A. These documents clearly shows that the concerned workmen are not recruited by the NIO by due process of law and admittedly they did not receive any letter from NIO in respect of work or wages.

19. Considering all these facts, documents and evidence on record, I find that the concerned workmen have not established employer – employee relationship between them and first party No.1. Issue No.2 is therefore answered accordingly in the negative.

Issue No. 3.

20. Learned Counsel for the second party workmen submitted that the work of the concerned workmen was supervised and controlled by officers of NIO and all these workmen were reporting to head of A/cs. Dept. of NIO. Submission is to the effect that the concerned workmen have worked for more than 8 years of continuous service and therefore their oral termination w.e.f. 1.10.06 is in blatant violation of section 25 (f) of I.D. Act. Submission is also to the effect that the termination amounts to retrenchment as defined u/s. 2 (oo) of the act and therefore all the workers are entitled to reinstatement with back wages.

21. As seen earlier the evidence on record clearly establishes that the concerned workmen were never in the employment of NIO i.e. first party. They were engaged through M/s. S. P. Bhandari & Associates, C.A., an outside contract agency which were supplying their employees for assisting in miscellaneous work related to accounts. There is no document to show that any of the concerned workmen has been employed by NIO. In the circumstances since there is no employer – employee relationship between the first party and second party, there cannot be any termination of services of the second party by the first party.

22. In the context, the Learned Counsel for the first party seeks to rely on the decision in case of Shrirampur Municipal Council, Shrirampur V/S. V.K. Barde, member Industrial Tribunal, Ahmednagar & Ors. – 2011 – CLR – 336 wherein the claim of regularization of casual employee was rejected on the ground that unless & until there is a sanctioned post and the recruitment is done in the settled manner, there cannot be any claim for absorption or continuation of the casual employee. Here in the instant case also the second party workmen are the employees of contractor M/s. S. P. Bhandari & Associates, C.A. and there is no employer – employee relationship between the first party and second party. The second party workmen in the circumstances cannot claim reinstatement with full back wages as prayed for. Issue No.3 is answered accordingly as indicated against it.

Issue No. 4 & 5.

In view of my findings to the above issues, I find that the the concerned workmen are not entitled to any relief and the reference is liable to be rejected. Hence order.

ORDER

The reference is rejected with no order as to costs.

Date: 12.03.2019

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 3 जून, 2019

का.आ. 1025.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स प्रबंध कार्यकारी अभियंता, सी पी डब्ल्यू डी, देहरादून और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली के पंचाट (संदर्भ संख्या 38/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.05.2019 को प्राप्त हुए थे।

[सं. एल-42011/75/2010-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 3rd June, 2019

S.O. 1025.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 38/2011) of the Central Government Industrial Tribunal-cum-Labour Court-2 New Delhi, as shown in the Annexure, in the Industrial Dispute between the employers in relation to The Executive Engineer, CPWD, Dehradun and Others, and their workmen which were received by the Central Government on 09.05.2019.

[No. L-42011/75/2010-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI****Present:** Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour

Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 38/2011**Date of Passing Award- 27th March, 2019****Between:**

The President,
All India CPWD (MRM) Karamchari Sangathan (Regd.)
House No. 4823, Gali No. 13,
Balbir Nagar Extension,
Shahdra, New Delhi- 110032.

... Workman

Versus

The Executive Engineer,
CPWD,
DCD-I, 20, Subhash Road,
Dehradun.

... Management

Appearances:-

Shri Satish Kumar Sharma, (Advocate)

For the Workman

Shri Atul Bhardwaj, (Advocate)

For the Management.

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of CPWD, and its workman/claimant herein, under clause (d) of sub section (1) and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L- 42011/75/2010 (IR(DU) dated 20.04.2011 to this tribunal for adjudication to the following effect.

“Whether the action of the management of CPWD, Dehradun in not granting consequential benefits accruing on account of in-situ promotion from 01.04.1991 to 08.08.1999 is illegal and unjustified? If so, what relief the workman is entitled to?

Being noticed the workman appeared and filed the claim statement stating therein that he was initially appointed as Mason in the year 1967 and confirmed as Beldar on 01.04.1977. During his tenure of his service he reached the maximum of the pay scale i.e. Rs. 750/- to 950/- in the year 1988. As per the order of the DGW and CPWD the management granted him in-situ promotion w.e.f. 01.04.1991 in the pay scale of 850/- to 1150/- by order dated 14.03.1996 but suddenly on 26.09.2005 by an arbitrary order in-situ promotion granted to him was withdrawn and his pay was revised unilaterally to his prejudice. The Government of India introduced the ACP scheme w.e.f. 09.08.1999 and the workman was granted first ACP on completion of 12 years of services raising his pay to 2650/- to 4000/-. Again on completion of 24 years second ACP was allowed w.e.f. 9.8.1999. Though the workman as per the Government notification was entitled to in-situ promotion to a higher pay scale before announcement of ACP the same was not considered. Before announcement of ACP by the order of DGW and CPWD dated 07.05.1997 the Assistant categories of work charged employees of CPWD merged with the main category and classified as skilled workers allowing higher pay scale notionally w.e.f. 01.01.73 but the arrears were paid w.e.f. 01.04.81. Since the Assistant category of Work Charged employee was abolished w.e.f. 01.01.73, the promotional scale of unskilled category automatically converted to skilled category instead of semi skilled category. Accordingly the department issued orders dated 29.06.2009 and 27.01.2010 asking the departments about the additional fund requirement. This workman was neither granted higher pay scale in the semi skilled category or in the skilled category after withdrawal of the in-situ promotion order on 26.09.2005. The action of the management being prejudicial the workman has prayed for an award to be passed directing the management to provide him in-situ promotion pay scale w.e.f. 01.04.1991 with all consequential benefits or to set aside the order dated 26.09.2005 withdrawing the in-situ promotion alongwith to consequential benefits.

The management appeared and filed written statement denying the stand taken by the workman. The contention raised by the management is that this proceeding is not maintainable since there exist no Industrial Dispute between the parties. The further contention of the management is that the claimant was initially appointed as Mason in the pay scale of Rs. 180-290/-. At the time of initial appointment he was an unskilled worker. He was confirmed in the post of Beldar on 01.04.77 and was allowed revision of pay scale as and when applicable as decided by the government. He also attained the maximum of the pay scale of 750 to 940/- in the year 1991. After stagnation he was also given increment as maximum permissible. On 14.03.1996 he was given in-situ promotion w.e.f. 01.04.1991 in the pay scale of Rs. 800/- to 1150/- . Later on the department issued a clarification that the in-situ promotion would be admissible upto 08.09.1999 i.e. till the date of introduction of ACP. To get the ACP the candidate has to qualify in the trade test. Since the workman could not qualify the trade test he was not given the ACP. Though 1st and 2nd ACP after completion of 12 and 24 years was allowed to him, raising his pay to Rs. 3050-4590/- and 4000-6000/- respectively. When 6th pay commission report was implemented his pay was fixed in the scale of 5200-20200/- w.e.f. 01.01.2006 on the option exercised by him. Subsequently it came to notice that the 2nd ACP was allowed to the workman by mistake though he had not qualified for the second Trade Test. Thus, by order dated 19.09.2006 the ACP was withdrawn and his pay scale was revised. Thereby management has stated that the relief claimed by the workman is not tenable in the eye of law.

On this rival pleading following issues are framed for adjudication.

1. Whether the action of the management of CPWD, Dehradun is not granting consequential benefits accruing on account of in-situ promotion from 01.04.1991 to 08.08.1999 is illegal and unjustified?

2. To what relief the workman is entitled to?

During course of hearing the workman examined himself as WW1 and exhibited the documents marked in a series of WW1/1 to WW1/5 he also exhibited the documents like the memorandum of settlement between the management and CPWD Mazdoor Union as WW1/1. WW1/2 is Gazette Notification of the arbitration award WW1/3 is the judgment of the Hon'ble High Court of Delhi in which the Hon'ble High Court direct payment of arrears for 01.04.81 to the persons getting in-situ promotion. In addition to that the workman has also produced photocopies of the office order recalling his pay scale withdrawing in-situ promotion the clarification given by the department regarding the Trade Test to qualify for the ACP and the office memorandum notifying merger of assistance in the category of skilled workman etc.

The management examined its Executive Engineer as MW1 and proved the series of documents including the gazette notification. It also proved the memorandum of the Ministry of Finance for grant of ACP to Group C and Group D and the order granting ACP to the workman.

FINDINGS

ISSUE No.1

Admitted facts are that the workman was initially appointed as Mason and he was made permanent in the post of Beldar on 01.04.1977. It is also not disputed that he was granted in-situ promotion w.e.f. 01.04.1991 in the pay scale of 800-1150/- and the actual order was passed on 14.03.1996. It is also not disputed that the in-situ promotion was allowed upto the time just before introduction of ACP. The other admitted fact is that the workman had reached the maximum scale of unskilled category i.e. 750 to 950/-. By filing the order of the CPWD dated 07.05.1997 marked as Exhibit WW1/5 the workman has stated that the government took a decision for merging Assistant categories of work charged employees with the corresponding main category and reclassifying them as skilled workman. Thus, after such merger all the promotions applicable to the skilled workman automatically became applicable to the semi skilled persons reclassified as skilled workman. The said order since directed that after the merger the pay scale of each worker in pre-revised scale will be fixed on 01.01.73 or on the date of merger whichever is later and again on 01.01.86 in the new scale as per the 4th pay commission, accordingly the pay scale of claimant was revised. There was no anomaly in the said pay fixation but the management acted arbitrarily in withdrawing the pay scale and in-situ promotion allowed to him.

It is the further contention of the workman that on account of that in-situ promotion he was never promoted to the next higher category and the 1st and 2nd ACP was correctly allowed to him. To support his contention he has relied upon the judgment of Hon'ble High Court of Punjab and Haryana in the case of **Union of India and Others vs. Raj Pal and Others decided in CWP No. 19387 of 2011**. It is also the contention of the workman that the said judgment of the Hon'ble High Court was followed by the Hon'ble CAT Principal Bench Delhi and upheld by the Hon'ble Supreme Court in SLP (CC NO. 7467 of 2013).

The witness examined on behalf of the management while admitting about the circular of DOPT regarding grant of ACP stated that the department had issued an order for grant of the pay scale of 850 to 1150/- to unskilled workers w.e.f. 01.04.1991. There is no dispute that the cadre of semi skilled worker merged with the skilled workers w.e.f. 01.01.73 as per the arbitration award of 1988. This was the award passed prior to the order issued by the DOPT on 13.09.1991 directing grant of in-situ promotion w.e.f. 01.01.73. Thus, it is found that the order of the management for grant of in-situ promotion to the workman and the others in the scale of 850 to 1150/- was not proper.

The contention of the management that for not qualifying the trade test the workman is not entitled to ACP is found, not based on record though the witness examined on behalf of the management during cross-examination though stated that for grant of 1st and 2nd ACP the workman had to qualify in 2 skill test and since it is fail to do so the ACP granted earlier by mistake was correctly withdrawn. This statement of witness not based upon facts since the documents filed by the management and marked as MW1/2 clearly shows that the in-situ promotion in the scale of 950 to 1500 which was a promotional scale was allowed to all semi skilled category renamed as skilled workers after the merger. There was no requirement like skill test for such benefits. Thus, it is held that the present workman on account of merger was entitled to in-situ promotion w.e.f. 01.04.1991 and his ACP should have been accordingly determined. The decision of the management for withdrawing the in-situ promotional scale and revising the ACP granted to him is held to be illegal. This issue is accordingly answered in favour of the workman.

ISSUE NO. 2

The workman is held entitled to promotional scale of 950 to 1500/- w.e.f. 01.04.91 under in-situ promotion and the same shall be taken into consideration for re-fixation of his pay in 1st ACP as a consequence thereof. Hence, ordered.

ORDER

The claim be and the same is answered in favour of the workman. It is directed that the management shall re-fix the salary of the workman in the pay scale of 950 to 1500/- w.e.f. 01.04.1991 in, in-situ promotion. In view of this direction the ACP to be allowed to the workman shall be accordingly revised. The pay on such fixation and differential arrear shall be paid to the workman by the management within 3 months from the date when this award would become enforceable failing which the workman would be at liberty of getting the order executed and on such event the management will be liable to pay the interest at the rate of 12% per Annum from the date when the amount becomes payable. Copy be supplied to the parties and the record be consigned in the record room.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 3 जून, 2019

का.आ. 1026.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स महाप्रबंधक, आयुध निर्माणी, गाजियाबाद (यू.पी.) और अन्य एवं उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली के पंचाट (संदर्भ संख्या 37/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 17.05.2019 को प्राप्त हुए थे।

[सं. एल-14012/01/2013-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 3rd June, 2019

S.O. 1026.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 37/2013) of the Central Government Industrial Tribunal-cum-Labour Court-2 New Delhi, as shown in the Annexure, in the Industrial Dispute between the employers in relation to The General Manager, Ordnance Factory, Ghaziabad (U.P.) and Others, and their workmen which were received by the Central Government on 17.05.2019.

[No. L-14012/01/2013-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI.

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 37/2013

Date of Passing Award- 29th April, 2019

Between:

Shri Sagir Ahmed,
S/o Late Shri Bundu Ahmed,
Servant Qrs, of Kothi No. 4, Type V/4, North Estate
Bangla Side, Ordnance Factory,
Murad Nagar, Ghaziabad (U.P.)

... Workman

Versus

The General Manager,
Ordnance Factory,
Murad Nagar,
Ghaziabad (U.P.)

... Management

Appearances:-

Shri Jitender Kumar, (Advocate)

For the Workman

Shri Atul Bhardwaj, (Advocate)

For the Management

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Ordnance Factory, and its workman/claimant herein, under clause (d) of sub section (1) and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L- 14012/01/2013 (IR(DU) dated 18.04.2013 to this tribunal for adjudication to the following effect.

“Whether the action of the management of Ordnance Factory, Muradnagar terminating the services of Shri Sagir Ahmed w.e.f. April 2008, without complying the provisions of Section 25 F,G,H of Industrial Dispute Act, 1947 is unjustified? To what relief the workman concerned is entitled to?”

The workman filed the claim statement stating therein that in June 1994 he was employed as a washer man on a temporary basis against the permanent post of washerman with the management on a monthly wage of Rs. 1000/-. He continued to work as such till April 2008 i.e for 14 years and till the date of his illegal termination. During this period his monthly salary was revised from time to time and his last drawn salary was 6000/-. As an employee, he had discharged his duties to the utmost satisfaction of the employer. In the year 2005 one of the permanent posts of washerman fall vacant and the workman requested orally to the management for regularization of his service against that vacant post and allow the regular pay scale as per the entitlement and recommendation of 6th central pay commission. This irritated the management who in April 2008 illegally and unjustifiably remove the workman from the service without assigning any reason for the same. Not only that the workman was neither served with retrenchment notice nor the notice pay and retrenchment compensation was paid to him in gross violation of the provisions of section 25-F of the ID act. While terminating his service the management also did not follow the principle of last come first go in violation of the provisions laid u/s 25-G of the ID Act. Thus, the workman made representation for enforcement of his rights which was not heeded to by the management. One case was filed by him before the Hon’ble CAT New Delhi and on a later date the same was withdrawn. On 2.07.2012 the workman sent a demand notice to the management and forwarded a copy of the same to the Assistant Labour Commissioner requesting intervention and resolution of the dispute. No relief could be availed by the workman in that forum and the present dispute was referred by the appropriate government for adjudication. In the claim statement the workman has prayed for reinstatement with continuity of service and full back wages alongwith other consequential benefits to be granted by the management.

The respondent management appeared and filed written statement rebutting the claim advanced by the workman. The maintainability of the proceeding has been challenge alongwith the challenge relating to employer employee relationship between the parties. The specific stand taken by the management is that the respondent is a govt. department discharging sovereign function of the state and not involved in carrying out activities which can be considered as trade or business, production distribution or supply of goods or services meant for satisfying human wants. It has also been pleaded that the Government of India in Ministry of Labour in the year 1989 has issued a clarification in this regard. While denying its relationship with the workman as employer and employee it has been stated that the workman was never employed as a temporary washerman in June 1994 on monthly wage of Rs. 1000/-. Management has also denied about the revision of his salary on intervals. As per the WS the claimant was working as a washerman on need basis and his remuneration was being paid as per the number of clothes washed by him. Sometimes the remuneration was increased as per the demand of the workman on account of escalated market price. While denying the plea of the workman that he had ever prayed for regularization of his service with regular pay scale the management has pleaded that he not being in service of the management at any point of time, the question of his termination doesn’t arise. It has also been pleaded that the workman not being an employee the provision of section 25-F of the ID act was not required to be complied. The management has also pleaded that there is no vacancy of washerman in the management and the workman was never employed on temporary basis against that vacancy. By citing the judgment of the Hon’ble Supreme Court pronounced in the case of Secretary State of Karnatak vs. Uma Devi and others the respondent has pleaded that the claimant being a casual worker working on daily wage basis cannot be absorbed against a permanent vacancy. Thereby the management pleaded for dismissal of the dispute.

On the rival pleading following issues were framed for adjudication.

1. Whether the action of the management of Ordnance Factory, Murad Nagar terminating the services of Shri Sagir Ahmad w.e.f. 6th April, 2008, without complying of provisions of section 25-F,G,H, of Industrial Dispute Act, 1947 is unjustified?
2. To what relief the workman concerned is entitled to?

The workman examined himself as WW1 and proved the documents which were marked in a series of exhibit WW1 /1 to WW1/16. Besides he also filed photocopies of the certain documents which were marked as ‘X’ and ‘Y’ subject to its relevancy and proof. Similarly the management examined one of its officers as MW1 who also proved documents in a series of MW1/1 to MW1/4.

During the pendency of the proceeding the workman had filed a petition for a direction to the management to produce documents regarding the service record of employee Pyarelal who had retired as a washerman in the year 2005, service record of washerman Vinod kumar having employee No. who had expire on 14.01.15 and the details of the vacancy in the management for the post of washerman. The management accordingly produced the service record of Pyarelal Vinod Kumar and replied that at present there is no vacancy for the post of washerman. To support the same the management also filed a copy of the Gazette of India dated 11.09.12 in which the procedure for employment of Group-D employees including washerman has been prescribed.

FINDINGS

ISSUE No. 1

Throughout the proceeding the claimant/workman has pleaded that his service was illegally terminated by the management without following the statutory provision of section 25-F of the ID act. The management has denied the same on the ground that his engagement was need based and thus, there was no necessity for complying with the provision of section 25-F of the ID act. The workman has further stated that he was a casual employee engaged against the permanent post and when his termination was effected there were permanent vacancies. Hence, the termination was illegal. In order to examine this aspect of the claim it is necessary to examine the status of the workman during the period of his engagement. The witness examined on behalf of the management has stated that the general manager Ordnance Factory Muradnagar had never appointed the applicant against any permanent post of washerman. No salary as a government servant was ever paid to the workman. Rather he was being paid wage at the rate of 1000/- per month initially and said amount was enhanced from time to time as per the order of the government. The documents marked as MW1/2 (Colly.) has been proved in this regard. This witness has further stated that the workman as per his own statement was thrown out of the job in April 2008 but he is still working under the contractor M.s Shewta Traders and a document MW1/3 has been filed. This witness was cross-examined at length by the workman. The document marked as MW1/2 is the contingent bill forwarded to the DCFA ordnance factory for sanction of washing and pressing charges. This document cannot be connected with the workman towards his wage though another document has been filed showing receipt of Rs 2500/- by the workman on May 2002. Similarly several contingent bills have been filed by the management but these documents have no correlation with the claim of the workman as a casual employee of the management. MW1 during cross-examination when asked about the existing vacancy of the washerman with the management she failed to reply the same unless the records were verified. However, she admitted during cross-examination that there was a person named Shri Vinond Kumar working as a permanent washerman and died on 14.01.2015. She has also admitted that no other persons has been appointed against that vacancy which leads to a conclusion that there is a vacancy for the post of regular washerman with the management.

The workman while adducing evidence has stated that from June 1994 till April 2007 he was working continuously as causal worker and was being paid monthly remuneration for the work done. To support his stand he has filed certain documents. Exhibit WW1/1 and WW1/2 are the gate pass issued to the workman. WW1/4 to WW1/8 are the certificates issued by the different officer of the management stating therein that the workman/claimant was working as an employee in the position of the washerman in the management. The workman has also filed several photocopies of the documents which have been marked in 'X' and 'Y' series. These documents include the note sheets of the different dates wherein the OIC, OFM, has requested the General Manager for sanction of money for payment of monthly washing charges to the washerman. There is another note sheet dated 08th May 2001 submitted by the OIC, DSC, DETT, OFM to the General Manager seeking approval of the monthly wage of Sagir Ahmed @ 2500/- per month. In the note sheet the officers of the management have clearly stated that Sagir Ahmed was employed as Washerman in DSC, DETT, to OFM in June 1994 on a monthly salary of Rs. 1000/-. For the escalation of price a proposal was submitted for increasing the monthly wage to 2500/- which was also approved and sanctioned by the General Manager. These two documents were prepared during an undisputed point of time by responsible officials of the management describing the workman as an employee whose remuneration was enhanced from time to time. No convincing grounds are found for discarding these documents to conclude that the claimant Sagir Ahmed was not a casual employee of the management since 1994.

In the case of **Steel Authority of India vs. National Union waterfront workers Union reported in (2001) 7 SCC Page 1** the Hon'ble Apex Court have prescribed for effective control test to ascertain about the relationship of the workman with the management. Not only that in the case of Chintaman Rao (1958)(II) LLJ 252 the Apex Court Ruled that the concept of employment involves 3 ingredients.

(i) Employer (ii) Employee (iii) contract of employment. The employer is one who employees or engages the service of other person. The employer is one who works for another for hire. The employment is the contract of the service between the employer and employee where under the employees agrees to serve the employer subject to his control and supervision. Further more in the case of Ram Singh and others vs. Union Territory Chandigarh and others (2004) 1 SCC Page 126 the Hon'ble Apex Court have elaborately discussed the factors to be considered for determining the employer employee relationship and the said factor include control, integration power of appointment, liability to pay, liability to organize etc. Thus, from the above analysis of the principle of law it emerges that the effective control is a test to determines the employer employee relationship between the parties.

Here is a case, where in his oral testimony the workman has categorically stated that he was discharging the duty as per the direction of the officers of the management and getting monthly remuneration from the management. This has not been denied by the management specifically. Rather the contention of the workman finds support from several recommendation letters issued by the officers of the management from time to time recommending the satisfactory nature of work rendered by the workman.

In the written statement the management No.1 has referred to the judgment the Constitution Bench of the Hon'ble Supreme Court passed in the case of **Secretary State of Karnatak and Others vs. Uma devi reported in (2006) 4 SCC Page1** and contended that the workmen of this proceeding since appointed for a fixed term on casual basis his claim for regularization is not maintainable. It has further been pleaded by management No. 1 that management is a government organization having its own rules and procedure of recruitment. The workman was never appointed following the said procedure and rule and his appointment was never against regular vacancy. Be it stated here that the management No.1 has adduced oral and documentary evidence to fortify the stand taken in this regard in the WS. In the case of Uma Devi referred supra the Hon'ble Supreme Court have held that the appointment of contractual employee and regularization of their services is not an automatic process and when a person was given appointment skipping the prescribed rule through a back door, cannot claim absorption or regularization against a sanctioned vacant post. This issue came up for consideration before Hon'ble Apex Court again in the case of Hari Nandan Prasad vs. Employer I/R to management of Food Corporation of India and another reported in AIR 2014 SC 1848, wherein the issue, whether the Labour Court Tribunal has the jurisdiction to order regularization of the workmen was considered in the context of the provision of the Act and the decision of the constitution bench in the case of Uma Devi. The Hon'ble Apex Court came to hold that the powers conferred upon the Industrial Tribunal/Labour Court under the ID Act are quite wide. The Act deals with industrial Disputes, provides for conciliation, adjudication, and settlements, and regulates the rights of the parties and the enforcement of the award and settlement. Not only that, way back in the year 1950 in the case of Bharat Bank Limited vs. Employees of Bharat Bank reported in (1950) LLJ 921 The Hon'ble Supreme Court had observed:

“In settling the disputes between the employers and the workmen, the function of the Tribunal is not confined to administration of justice in accordance with law. It can confer rights and privileges on either party which it considers reasonable and proper, though they may not be within the terms of any existing agreement. It has not merely to interpret or give effect to the contractual rights and obligations of the parties. It can create new rights and obligations between them which it considers essential for keeping industrial peace.”

In the above said backdrop and considering the different pronouncements of the Hon'ble Apex Court while reverting to the facts of the present case the grievance of the claimants is that he was appointed against the post the nature of work performed was perennial and the post was permanent in nature. Though he was appointed on casual basis and discharging his duties with utmost satisfaction of the employer i.e. Management was subjected to unfair labour practice. This aspect as pleaded by the workman has been denied by the management in the WS only. On behalf of the workman photocopies of the note sheet showing sanction of his remuneration have been filed. These documents have not been controverted by the management and go to show that the claimant/workman was working for the relevant period on monthly remuneration paid by the management and different officers to whom the workman was reporting then had issued recommendations on his satisfactory service. On the contrary these unrebutted documents clearly establish that the present workman was working under the effective control and supervision of management till his removal from service.

During course of argument Ld. Counsel for the workmen drew the attention of this tribunal to the case of **J and K Bank Limited vs. CGIT reported in 2018 Lab. I.C. Page 2970** passed by the Hon'ble High Court of Jammu and Kashmir in which the case of Hari Nandan Prasad and Uma Devi referred supra was elaborately discussed with regard to the effect and implication of the constitution bench decision of the Apex Court in the case of Uma Devi. In the said judgment reference has been made to the case of **Maharashtra SRTC. Casteribe Rajya Parivahan Karmchari Sangathan (2009)8 SCC 556** in which the issue before the Hon'ble Supreme Court was with regard to the jurisdiction of the Industrial court to give status wages and all other benefits of permanency to the workmen who had been serving for years as cleaners in the corporation in temporary capacity. Relying upon Uma Devi, plea was raised on behalf of the corporation that granting permanent status to the casual workers/daily wager was not sustainable in law. Repealing the said argument the Hon'ble Supreme court in Para 32 and 33 of the judgment have observed:-

“32. The power given to the Industrial and Labour Courts under Section 30 is very wide and affirmative action mentioned therein is inclusive and exhaustive. Employing badlis, casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees is an unfair labour practice on the part of the employer under Item 6 of Schedule IV. Once such unfair labour practice on the part of the employer is established in the complaint, the Industrial and Labour Courts are empowered to issue preventive as well as positive direction to an erring employer.

“33. The provisions of MRTU and PULP Act and the powers of Industrial Labour Courts provided therein were not at all under consideration in the case of Uma Devi1. As a matter of fact, the issue like the present one pertaining to unfair labour practice was not at all referred, considered or decided in Umadevi1. Unfair labour practice on the part of the employer in engaging employees as badlies, casuals or temporaries and to continue them as such for years with the object of depriving them of the status and privileges of permanent employees as provided in Item 6 of Schedule IV and the power of Industrial and Labour Courts under section 30 of the Act did not fall for adjudication or consideration before the constitution Bench”.

Thus, on a harmonious reading of the different pronouncements of the Hon'ble Apex Court this tribunal comes to hold that the workman was subjected to unfair labour practice on account of his termination of service without complying the provisions of section 25-F of the ID Act. And thus, the act of termination is held to be wholly unjustified.

ISSUE NO.2

Now the most important question left to be answered is if the tribunal can direct the management to regularize the service of the workman in the post of permanent washerman. On behalf of the management a copy of the Gazette has been filed to show that the post of washerman is no more available to be filled up by direct recruitment. Thereby the management has denied the claim of the workman to be absorbed against permanent vacancy. But the notification published in the Gazette dated 29th July 2012 deals with the procedure of the recruitment to different post including the post of Dhobi i.e. washerman and there being no specific clause for its retrospective application it is held that the said rule has a prospective application and cannot be pressed into service to justify the action taken against the present workman. The oral and documentary evidence adduced by the workman as well as the management clearly proves that the post of washerman is a permanent post with the management and the date on which the employment of the workman was brought to an end there was a vacancy in the said post. On that day the recruitment rule referred supra was also not in force.

In the case of **Oil & Natural Gas Corporation Limited vs. Petroleum Coal Labour Union and others reported in (2015) 6 SCC Page 494** the Hon'ble Apex Court while considering the jurisdiction of the industrial Tribunal to direct regularization of the service of the workman came to hold that in the case of **Hari Nandan Prasad vs. Food Corporation and U.P Power Corporation vs. Bijli Mazdoor Sangh reported in (2007) 5 SCC 755** the court came to hold that the underline message contained in Uma Devi case would not deter the Industrial Tribunal/Labour Court from issuing such direction, which the Industrial Adjudicator otherwise possesses, having regard to the provision of the ID Act specially conferring such powers. Hence, it is concluded that for the employment of the workman with the management for a continuous period from June 1994 till April 2008 and for his completion of 240 days work in a calendar year proceeding to his termination he is entitled to the relief of the reinstatement as has been prayed.

The Ld. A/R for the management argued that this Tribunal has to adjudicate the dispute in the terms of reference only. In the said reference there is no mention about the relief of the reinstatement. This argument of the Ld. A/R for the management is not accepted since the reference is about any other relief which can be allowed to the workman in the circumstances.

In the case of **Bharat Sanchar Nigam Limited vs. Smt. Shashikanta Rishi decided by the Hon'ble High Court of Delhi in WPC no. 225/2005**, it has been held that when an employee is terminated without complying the provision of section 25-F of the ID Act the same amounts to violation of the principle of nature justice. In this case there is absolutely no evidence laid by the management to prove that the workman has been gainfully employed after such termination. Hence, it is concluded that the workman who was working as a casual labour was removed from service illegally even though he had rendered service for more than 240 days in the calendar year preceding to his termination. When the evidence proves that he was discharging the work of permanent nature continuously for more than 10 years, the act of his removal amounts to unfair labour practice which has been held by the Hon'ble Supreme Court in the case of **Sudarshan Rajput vs. U.P State Road Transport Corporation reported in (2015) 2 SCC 317**.

Considering the facts of the present case with reference to the judicial pronouncements discussed in the preceding paragraph it is concluded that for the unfair labour practice adopted by the management the workman is entitled to relief of the reinstatement since from the statement of claim and affidavit filed by him it appears that the workman has not attained the age of superannuation yet. This issue is accordingly answered in favour of workman. Hence, ordered.

ORDER

The reference be and the same is allowed in the following terms. The management is directed to reinstate the workman to service in the post of washerman within 1 month when this award would become executable. Since the workman has not been gainfully employed during the intervening period the management is directed to pay him 50% of the accrued remuneration as per his last remuneration for the said intervening period within 3 months from the date when the award become executable. The amount shall not carry any interest. On the event the management fails to carry out the direction within the time stipulated above, the amount accrued shall carry interest @ 12% from the date of accrual till the final payment is made. Copy be supplied to the parties and the record be consigned in the record room.

The complaint is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 3 जून, 2019

का.आ. 1027.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स निदेशक, राष्ट्रीय अनार अनुसंधान केंद्र सोलापुर (महाराष्ट्र) एवं उनके कर्मचारी और अन्य के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. 2, मुंबई के पंचाट (संदर्भ संख्या CGIT-2/49 of 2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 06.06.2019 को प्राप्त हुए थे।

[सं. एल-42012/48/2014-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 3rd June, 2019

S.O. 1027.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT-2/49 of 2014) of the Central Government Industrial Tribunal-cum-Labour Court No. 2 Mumbai as shown in the Annexure, in the Industrial Dispute between the employers in relation to The Director, National Research Centre for Pomegranate, Solapur (Maharashtra) and their workmen and others, which received by the Central Government on 06.06.2019.

[No. L-42012/48/2014-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI****PRESENT :** M. V. Deshpande, Presiding Officer**REFERENCE NO. CGIT-2/49 of 2014****EMPLOYERS IN RELATION TO THE MANAGEMENT OF****(1) NATIONAL RESEARCH CENTRE FOR POMEGRANATE****(2) M/S. SWADESHI SECURITIES**

The Director,
National Research Centre for Pomegranate,
Near Solapur University,
Solapur (Maharashtra).

M/s. Swadeshi Security,
96, Salgar Vasti,
Dongaon Road,
Solapur (Maharashtra).

**AND
THEIR WORKMEN**

Shri Balaji Baburao Gaikwad,
Dr. Ambedkar Nagar,
Anand Chowk, Budhwar Peth,
Solapur (Maharashtra) – 413002

APPEARANCES:

FOR THE EMPLOYER : Shri S.P. Chinchwadkar, Advocate

FOR THE WORKMEN : Shri V.R. Deshpande, Advocate

Mumbai, dated the 16th May, 2019**AWARD**

1. This is reference made by the Central Government in exercise of powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide Government of India, Ministry of Labour & Employment, New Delhi vide its order No. L-42012/48/2014 – IR (DU) dated 23.07.2014. The terms of reference given in the schedule are as follows :

“Whether the demand of the workman Shri Balaji Baburao Gaikwad, for asking regulation as an employee of National Research Centre for Pomegranate, Solapur is legal and justified ? If yes to what relief the workman is entitled to ?”

2. After the receipt of the reference, both the parties were served with the notices.

3. On going through Roznama it appears that the concerned workman is absent since long. He has not filed affidavit in support of his statement of claim. Today also he is absent hence there is no evidence to substantiate the statement of claim. Therefore the reference is disposed of for want of evidence to substantiate the statement of claim.

4. Hence the reference is rejected with no order as to costs. Hence order.

ORDER

Reference is rejected with no order as to costs.

Date: 16.05.2019

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 4 जून, 2019

का.आ. 1028.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स महाप्रबंधक, भारत संचार निगम लिमिटेड, बेलगाम बेंगलोर और अन्य एवं उनके कर्मचारी के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बेंगलोर के पंचाट (संदर्भ संख्या 20/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 25.05.2019 को प्राप्त हुए थे।

[सं. एल-40012/169/2004-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 4th June, 2019

S.O. 1028.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 20/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore, as shown in the Annexure, in the Industrial Dispute between the employers in relation to The General Manager, Bharat Sanchar Nigam Ltd. Belgaum, Bangalore, and Others, and their workmen which were received by the Central Government on 25.05.2019.

[No. L-40012/169/2004-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
BANGALORE – 560 022**

DATED : 20TH MAY 2019

PRESENT : Justice Smt. Rathnakala, Presiding Officer

C.R No. 20/2005

<u>I Party</u>	<u>II Party</u>
Sri Siddoba Shivaji Kambar, At & PO: Malabad, Athani Taluk, Belgaum District – 591 212.	1. The General Manager, Bharat Sanchar Nigam Ltd., Old H.P.O. Compound, Fort Road,

Belgaum – 590 001.

2. The Managing Director,
Zebra Security Services,
KTJ Nagar, 16th Cross,
Davangere – 577 003.

Advocate for I Party : Advocate for II Party:

Mr. B.D. Kuttappa : Mr. Y. Hari Prasad

AWARD

The Central Government vide Order No. L-40012/169/2004/IR(DU) dated 20.04.2005 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

“Whether the management of BSNL is justified in denying regularisation and termination of Sh. Siddova Shivaji Kambar? If not, to what relief the workman is entitled to?”

1. The claim of the 1st Party workman is, he was employed by the 2nd Party from December 2000 to 06.06.2004; he was terminated on 07.06.2004 without assigning any reason and without an order in writing; he has an uninterrupted service for 1528 days. However, he was reinstated on 10.07.2004; again he was terminated on 24.09.2004. 2nd time he worked for 109 days from 10.07.2004 to 23.09.2004. He was employed for laying of OFsC (Optical Fibre Cables) between Athani and Kottalagi. The OFC laying work was completed from December 2000 to 30.05.2001. He was shifted to Anantpur Rural Exchange in Athani Taluk, after giving him fitment training of maintenance. There was acute shortage of man power in the Telephone Exchange of Athani Taluk, because of the total ban on recruitment/engagement of workmen w.e.f 30.03.1985. In the year 1996 they engaged Security persons through (Labour) Contractor. Thereafter they engaged workmen for regular maintenance. Thus he was directly engaged by the employer management from December 2000 to July 2003. Surreptitiously the respondent changed the nature of its employment from direct contract labour to overcome the ban imposed by the circular dated 30.04.1985. His termination after putting continuous service of over 4 years without any valid reasons and without observing the prescribed procedure is blatant violation of section 25-F of the Industrial Dispute Act. He was entitled to be regularized after completion of one year of service as per the Law, Rules, Regulations and Orders issued by the Employer Management. In the year 2003 the education credentials were taken by SDOT, Athani, Sub-Division for regularization; from August 2003 his salary was raised to Rs. 1,800/- per month from Rs. 1,200/- per month but subsequently he was informed that his job was not regularized, he was not employed by any Security Agency.

2. The claim is contested by the 2nd Party on the following lines:-

That he was not engaged under the 2nd Party No. 1 at any point of time specifically from December 2000 to 06.06.2004; all other allegations are false and baseless. He was working as Security Guard through a Agency called Zebra Security Services. He remained absent voluntarily for 15 days from security services on account of his marriage. Still he is in security service at Anantpur Telephone Exchange as Security Guard; he was not terminated as alleged by the 1st Party.

3. The 1st Party workman in proof of his contention during his evidence produced (Ex W-1 to Ex W-3) photo copies of the letters given to him for purchase of articles, register maintained by him regarding new connection, letter given by various persons in his favour. There is no much cross examination to his evidence.

4. The 2nd Party during their evidence produced list of security guards working in Athani Taluk under Zebra Security Services. Accordingly out of 38 security persons name of Sh. Siddhoba Shivaji Kambar working at Anantpur from 13.08.2003 is reflected. They have produced attested copy from the Zebra Security Services that 1st Party workman is their employee. MW-1 is the Divisional Engineer of the 2nd Party who reiterated that 1st Party is the Security Personnel of the Zebra Security Services. During his cross examination he stated that he worked as Divisional Engineer at Athani from August 2010 and he has no personal acquaintance with the 1st Party. He is also unaware whether BSNL is registered as Principal Employer under the Contract Act or Zebra Security Services has license to provide contract labour.

5. It is the case of denial of the identity of the 1st Party workman. The burden of proving the employer employee relationship was on the 1st Party workman; he has produced several documents (Ex W-1 to Ex W-3). The 2nd Party has not challenged veracity of these documents. That prompts this Tribunal to consider Ex W-1 to Ex W-3, though they are not attested true copy of the original or not certified copies. Though, it is stated that he was an employee of the Zebra Security Services said fact is not proved before this Tribunal with convincing evidence. It is also possible that, they were using security personnel's as their own casual workers. The 2nd Party relies on the Judgement of the Apex Court in Secretary, State of Karnataka & Others vs Umadevi & Others, 2006 AIR SCW 1991 and also Indian Drugs & Pharmaceuticals Ltd., vs Workmen, Indian Drugs & Pharmaceuticals Ltd., (2007)1 SCC 408. Now it is legal position that regularization cannot be sought as of right on the basis of continuous service rendered. The Court cannot endorse the appointment which is not made following the due process of selection as envisaged by the relevant rules.

6. The 2nd Party having shown the 1st Party workman as an employee of the contractor who was supplying the security personnel's, since did not produce any documentary proof to demonstrate that the employer had registered under section 7 of the Contract Labour (Regulation and Abolition) 1970 to engage the service of contract labour, by preponderance of probability it shall be held that 1st Party worked with the 2nd Party from December 2000 to 06.06.2004 and after a break he worked for another 74 days. The very fact that the 2nd Party refused to accept him as the workman proves the claim allegation that he was orally terminated from service w.e.f 24.09.2004. Since, he had put in continuous service of 1528 days as contemplated by section 25-B of the Act, his termination amounts to illegal retrenchment for not following condition precedent contemplated by section 25-F of the Act. Had if the 2nd Party followed the due process of law to remove him from service he would have been eligible for one month notice in writing or the wages for the notice period and also a compensation equivalent to 15 days average pay for every completed period of continuous service. The 1st Party has alleged that after his initial termination on 07.06.2004 at the intervention of the then TAC Member he was reinstated and again terminated for having refused to withdraw the complaint given to the Assistant Labour Commissioner, Hubli; However, such allegation is not supported by documentary proof. It appears that something is amiss between his initial termination on 07.06.2004 and his reappointment on 07.10.2004 which is not at all explained by the 2nd Party. Having worked continuously with the 2nd Party from December 2000 to June 2004 definitely he falls under the category of workman contemplated under section 2(S) of the Act. The 2nd Party being his employer having removed him from service without following the procedure contemplated by section 25-F of the Act (since, the law does not subscribe for his regularization or absorption) shall pay retrenchment compensation. It is already more than 15 years from the date of his termination. Arithmetical calculation of retrenchment compensation (i.e. amount equivalent to 15 days average pay for every completed years of continuous service or any part thereof in excess of 6 months) will be meagre, by looking to the depreciation of money value from the year 2004 till date.

In my considered opinion compensation in lump sum of Rs. 25,000/- would suffice the ends of justice being met. Hence, the following

AWARD

The reference is accepted. The denial by the 2nd Party BSNL to regularise the 1st Party workman Sh. Siddoba Shivaji Kambar though justified, his oral termination w.e.f 07.06.2004 and 24.09.2004 is in violation of the section 25-F of the Industrial Dispute Act, 1947. Hence the 2nd Party is directed to pay compensation of Rs. 25,000/- (Twenty Five Thousand) in lump sum to the 1st Party workman Sh. Siddoba Shivaji Kambar within 60 days of publication of this Award, otherwise the amount shall carry future interest of 8% per annum till payment.

(Dictated, corrected and signed by me on 20th May, 2019)

JUSTICE SMT. RATHNAKALA, Presiding Officer

नई दिल्ली, 4 जून, 2019

का.आ. 1029.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स अधीक्षण पुरातत्वविद, भारतीय पुरातत्व सर्वेक्षण, कोरमंगला, बेंगलोर और अन्य एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बेंगलोर के पंचाट (संदर्भ संख्या 36/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 25.05.2019 को प्राप्त हुए थे।

[सं. एल-42012/75/2011-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 4th June, 2019

S.O. 1029.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 36/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore, as shown in the Annexure, in the Industrial Dispute between the employers in relation to The Superintending Archaeologist, Archaeological Survey of India, Koramangala, Bangalore and Others, and their workmen which were received by the Central Government on 25.05.2019.

[No. L-42012/75/2011-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIUBNAL-CUM-LABOUR COURT,
BANGALORE – 560 022DATED : 28th MARCH 2019

PRESENT : JUSTICE SMT. RATHNAKALA, Presiding Officer

C R No.36/2011

<u>I Party</u>	<u>II Party</u>
Sh. Lakshamma, W/o Dorai Swamy and 4 others, 6 th Ward, HPC Road, Behind Kaka Angadi (Near Bridge), Kamalapur, Hospet Taluk, BELLARY – 583 221.	1. The Superintending Archaeologist, Archaeological Survey of India, 5th Floor, KendriyaSadan, F Wing, Koramangala, Bangalore – 34.
	2. The Senior Conversation Assistant, Archaeological Survey of India, Ambedkar Circle, KAMLAPUR – 583 321.

Appearances:

I Party : Shri P Suresh, Advocate

II Party : Shri Satish B, Advocate

1. The Central Government vide order No. L-42012/75/2011-IR(DU) dated 20.09.2011 in exercise of the power conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) made this reference for adjudication with the following schedule:

SCHEDULE

“Whether, the action of the management of archeological Survery of India in terminating the services of (i) Smt. Lakshamma W/o Shri DoraiSwamy, (ii) Smt. Ambika, W/o Shri Maruthi, (iii) Smt. Laxamma W/o Shri Ramaswamy, (iv) Smt. Rukmini W/o Shri Cheluvaraj and (v) Smt. Kesugi W/o Shri Ponnuswamy is legal and justified? What relief the workmen are entitled to?”

2. The 1st Party though represented through her learned advocate has not filed claim statement. 2nd Party having filed their statement, placed evidence by way of affidavit of its Deputy Superintending Archaeologist, ASI, he was discharged without cross-examination. Thus his affidavit evidence remained unchallenged. Written arguments is also submitted.

3. The case set forth by the 2nd Party is that the 1st Party workman were engaged as Casual Labourers at ASI, Kamalapuram, for intermittent period for works of temporary nature from 2000 – 2006; their services was utilized whenever required for casual nature and as per availability of funds; they used to be engaged on daily wages for works of casual nature and disengage as soon as work was over; they are not governed by any rule or regulation; they are not issued any notice whenever disengaged. The casual laborers engaged after 07.06.1988 had to be sponsored through Employment Exchange along with condition of completion of 240 days of service in each of the preceding two years and full filling required educational qualification etc., for inclusion of their name in seniority list for future regularisation. The claim made by ex-casual labourers does not constitute an industrial dispute. The II Party is not an industry, it is purely an academic institution engaged in research and allied works comprising of mainly preserving the rich cultural heritage and conducting excavations, study of our history, it is not a profit oriented organisation nor engaged in production. The department is exercising the sovereign powers of the government and do research work. The I party workmen were not engaged in any business or production. There is no contractual obligation between the parties.

4. In the absence of anything contrary to the case of the 2nd Party, it is inevitable to conclude that 2nd Party as an instrument of the government is engaged in academic programmes, research and study. The I Party workers who worked on need basis are casual labourers are not the workmen of the II Party. If the II Party has not provide work for them, there is no illegality on their part.

AWARD**Reference is Rejected**

(Dictated to U D C, transcribed by him, corrected and signed by me on 28th March 2019)

JUSTICE SMT. RATHNAKALA, Presiding Officer

नई दिल्ली, 4 जून, 2019

का.आ. 1030.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स अधीक्षण पुरातत्वविद, भारतीय पुरातत्व सर्वेक्षण, कोरमंगला, बेंगलोर, और अन्य एवं उनके कर्मचारी के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बेंगलोर के पंचाट (संदर्भ संख्या 35/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 03.04.2019 को प्राप्त हुए थे।

[सं. एल-42012/74/2011-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 4th June, 2019

S.O. 1030.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 35/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore, as shown in the Annexure, in the Industrial Dispute between the employers in relation to The Superintending Archaeologist, Archaeological Survey of India, Koramangala, Bangalore and Others, and their workmen which were received by the Central Government on 25.05.2019.

[No. L-42012/74/2011-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
BANGALORE – 560 022**

DATED : 28th MARCH 2019

PRESENT : JUSTICE SMT. RATHNAKALA, Presiding Officer

C R No. 35/2011

<u>I Party</u>	<u>II Party</u>
Sh. Rehmat Ali, S/o Shri Syed Alisa, 6 th Ward, HPC Road, Opp. Church, Kamalapur, Hospet Taluk, BELLARY – 583 221.	1. The Superintending Archaeologist, Archaeological Survey of India, 5th Floor, KendriyaSadan, F Wing, Koramangala, Bangalore – 34. 2. The Senior Conversation Assistant, Archaeological Survey of India, Ambedkar Circle, KAMLAPUR – 583 321.

Appearances :

I Party : Shri P Suresh, Advocate

II Party : Shri Satish B, Advocate

1. The Central Government vide order No. L42012/74/2011-IR(DU) dated 19.09.2011 in exercise of the power conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) made this reference for adjudication with the following schedule:

SCHEDULE

“Whether the action of the management of Archeological Survey of India in terminating the services of Shri Rehmat Ali, Casual Labourer, is legal and justified? What relief the workman is entitled to?”

2. The I party though represented through his learned advocate has not filed claim statement. II Party having filed their statement, placed evidence by way of affidavit of its Deputy Superintending Archaeologist, ASI, he was discharged without cross-examination. Thus his affidavit evidence remained unchallenged. Written arguments is also submitted.

3. The case set forth by the 2nd Party is that the 1st Party workman was engaged as casual labourers at ASI, Kamalapuram, for intermittent period to do works of temporary nature from 2000 – 2006; his services were utilized whenever required for casual nature and as per availability of funds; he used to be engaged on daily wages for works of casual nature and disengage as soon as work was over; he was not governed by any rule or regulation; he was not issued any notice whenever disengaged. The casual laborer engaged after 07.06.1988 had to be sponsored through Employment Exchange along with condition of completion of 240 days of service in each of the preceding two years and full filling required educational qualification etc., for inclusion of their name in seniority list for future regularisation. The claim made by ex-casual labourer does not constitute an industrial dispute. The 2nd Party is not an industry, it is purely an academic institution engaged in research and allied works comprising of mainly preserving the rich cultural heritage and conducting excavations, study of our history, it is not a profit oriented organisation nor engaged in production. The department is exercising the sovereign powers of the government and do research work. The I party workman was not engaged in any business or production. There is no contractual obligation between the parties.

4. In the absence of anything contrary to the case of 2nd Party, it is inevitable to conclude that II Party as an instrument of the government is engaged in academic programmes, research and study. The I Party workman who worked on need basis is casual labourers and not a workmen of the II Party. If the II Party has not provide work for him, there is no illegality on their part.

AWARD

Reference is Rejected

(Dictated to U D C, transcribed by him, corrected and signed by me on 28th March 2019)

JUSTICE SMT. RATHNAKALA, Presiding Officer

नई दिल्ली, 4 जून, 2019

का.आ. 1031.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स रिलायंस इंटीग्रेटेड सर्विसेज प्रा. लिमिटेड कोलकाता और अन्य एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ संख्या 27/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 29.05.2019 को प्राप्त हुए थे।

[सं. एल-40012/93/2013-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 4th June, 2019

S.O. 1031.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 27/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Kolkata, as shown in the Annexure, in the Industrial Dispute between the employers in relation to The Reliance Integrated Services Pvt. Ltd. Kolkata and Others, and their workmen which were received by the Central Government on 29.05.2019.

[No. L-40012/93/2013-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 27 of 2014

Parties: Employers in relation to the management of Reliance Integrated Services Pvt. Ltd.

**AND
Their workmen**

Present: Justice Ravindra Nath Mishra, Presiding Officer

Appearance:

On behalf of the Management : None

On behalf of the Workmen : Ms. Papiya Chatterjee, learned counsel

Dated: 22nd May, 2019

Industry : Telecommunication

AWARD

Brief facts in the background of which this reference has been made to this Tribunal are that Mrs. Mitun Chakraborty was appointed as 'Assistant Manager, Customer Care' and was posted at Kolkata where she was doing mainly clerical jobs, viz. maintenance of general ledger, preparation of draft and letters as directed by the superiors in connection with the customer application form verification on behalf of the employer, Reliance Integrated Services Pvt. Ltd. She has been performing all the jobs under the direction of the management without any independent initiative and during working season she had to perform multifarious duties. On successful completion of probation period of six months, she was confirmed to the post of Assistant Manager, Customer Care. She has been performing her job with the satisfaction of her superiors, but all of a sudden on 01.07.2011 a letter of termination was issued to her by the company without any enquiry. She was not afforded any opportunity to submit her explanation. Thus it is alleged that her retrenchment was illegal and termination order is *void ab initio*. Therefore, she approached Labour Commissioner with a request for setting aside the order of termination, where the company submitted its report that she was working as an Assistant Manager, Customer Care with the company enjoying and exercising all the powers of Assistant Manager independently and as such she is not a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 (hereinafter called as the Act of 1947 for convenience). After several rounds, the conciliation ended in failure. Therefore, the Central Government in exercise of its powers under Section 10(1)(d) and (2A) of the Act of 1947 vide Order No. L-40012/93/2013-IR(DU) dated 17.02.2014 referred the dispute to this Tribunal for adjudicate in following terms:

"Whether the termination of service of Mrs. Mitun Chakraborty by the management of Reliance Integrated Services Pvt. Ltd., Kolkata without assigning any reason therein is justified? If not, what relief Mrs. Mitun Chakraborty is entitled to?"

2. After receipt of above reference, notices were issued to the parties whereupon the employee concerned, Mrs. Mitun Chakraborty filed her statement of claims. However, despite sufficient service, the company did not appear. Therefore, the Tribunal proceeded *ex parte* against the company and recorded *ex parte* evidence. Affidavit of Mrs. Mitun Chakraborty was taken on record. As the case was proceeding *ex parte* in absence of the company, she could not be cross-examined. As documentary evidence original appointment letter of the employee concerned dated 10th August, 2007, Ext. W-01, copy of e-mail sent by the employee concerned regarding her Key Responsibility Area, letter of confirmation, Ext. W-02, performance report dated 11.09.2008, Ext. W-03, letter of annual increment, Ext. W-04 and letter of her termination, Ext. W-05 have been filed.

3. I have heard the employee concerned and perused the record.

4. The only argument advanced by the employee concerned is that her services were terminated without enquiry and affording any opportunity to explain, her termination is illegal. Though the company did not appear in the case, but from the statement of claims and also the documents submitted by the employee concerned it is evident that the company had taken the plea before the conciliation officer that she is not workman within the meaning of Section 2(s) of the Act of 1947. Apart from this, before applying any of the provisions of the Act of 1947 in order to determine the legality or illegality of the termination of the employee concerned, it is necessary to decide whether the employee concerned comes within the definition of 'workman' under the Act of 1947.

5. Section 2(s) of the Act of 1947 defines 'workman' which may be quoted as below –

"2(s) "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a

consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person –

- (i) who is subject to the Air Force Act, 1950(45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
- (ii) who is employed in the police service or as an officer or other employee of prison; or
- (iii) who is employed mainly in a managerial or administrative capacity; or
- (iv) who, being employed in a supervisory capacity, draws wages exceeding then thousand rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.”

6. From above provision of Section 2(s) of the Act of 1947 it is vividly clear that any person who is employed mainly in managerial and administrative capacity does not come within the definition of workman. However, case of the employee concerned is that designation does not decide whether she is a workman or not. During her employment she was doing mainly clerical job, I.e., maintenance of ledger, preparation of draft and letters on direction of superiors. Thus relying on **Arkal Gobind Rao v. Ciba Geigy of India Ltd.**, AIR 1985 SC 985 it has been submitted that where an employee has multifarious duties it is the primary and basic duties of the employee which decide whether she is a workman or not. In above cited case the employee was appointed as an Assistant and continued to render service in that post till his termination. On the basis of documentary evidence the Labour Court was of the opinion that though he was doing some clerical work, he was also doing supervisory and administrative work and other work of checking bank reconciliation, therefore, he was not a workman within the meaning of the Act. The Hon’ble Supreme Court held –

“6. Where an employee has multifarious duties and a question is raised whether he is a workman or someone other than a workman the Court must find out what are the primary and basic duties of the person concerned and if he is incidentally asked to do some other work, may not necessarily be in tune with the basic duties, these additional duties cannot change the character and status of the person concerned. In other words, the dominant purpose of employment must be first taken into consideration and the gloss of some additional duties must be rejected while determining the status and character of the person. Appreciation of evidence by Labour Court cannot be faulted but it landed itself into an erroneous conclusion by drawing impermissible inference from the evidence and overlooking the primary requirement of the principal and subsidiary duties of the appellant.”

7. Now it is the duty of the employee concerned to prove that though she was appointed as Assistant Manager, her primary and basic duties were of clerical nature and she was incidentally doing managerial work. In **Manager, Reserve Bank of India v. S. Many**, 2005 LLR 737 it was held by the Hon’ble Apex Court that it is only if the initial burden of proof which was on the workman was discharged to some extent, that a finding can be returned in respect of the defence of the management. Furthermore, a plea having been set up by the workman, the initial burden of proof was on the workman that he had been employed by the petitioner in the claimed capacity on the stated terms.

8. It is true that the case is proceeding *ex parte* and no evidence has been adduced by the company, but that does not mean that the allegation put forth by the employee concerned should be taken to be true without any support of evidence. The employee concerned has to prove her own case. Thus burden lies on the employee concerned to prove that despite her appointment to the post of Assistant Manager-Customer Care, she was doing the job of clerical nature. But copy of e-mail sent by the employee herself on 20th March, 2011 in respect of her Key Responsibility Area speaks otherwise. From this document it appears that the employee concerned was responsible for IRMS, viz. Integrated Risk Management Strategy in the matter of finance, for CAF, viz. Common Assessment Framework – a standard approach to assess needs of customers to identify the same and to meet with effectively. It was the responsibility given to her with regard to customers. Similarly, she was also responsible for audiovisual presentation Transportational Satellite Communication System and virtual transportation to enable the customers to act on the information provided at any time and at any place. Her action plan shows that she was also responsible to ensure commitment between the service provider and a client in the area of service level agreement. Thus in view of the KRA as submitted by the employee herself it cannot be said that her primary and basic duties were of clerical nature, instead she was appointed as Assistant Manager and she was also doing managerial work. Hence, in view of definition of workman as defined under Section 2(s) of the Act of 1947, she does not come within the definition.

9. Consequently, when she is not a workman, she cannot claim benefit of Section 25F of the Act of 1947. As per appointment letter containing terms of her appointment, her service can be terminated at any time after giving three months’ notice or payment of basic salary.

10. In view of above, the termination of service of the employees, Mrs. Mitun Chakraborty by the management of Reliance Integrated Services Ltd. without assigning any reason cannot be said to be illegal and unjustified. Therefore, she is not entitled for any relief.

11. Award is passed accordingly.

JUSTICE RAVINDRA NATH MISHRA, Presiding Officer

Kolkata, the 22nd May, 2019

नई दिल्ली, 7 जून, 2019

का.आ. 1032.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स प्रधानाचार्य, केन्द्रीय विद्यालय नंबर 2, विशाखापत्तनम (ए.पी.) और अन्य एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, हैदराबाद के पंचाट (संदर्भ संख्या 42/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 06.06.2019 को प्राप्त हुआ था।

[सं. एल-42012/10/2014-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 7th June, 2019

S.O. 1032.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 42/2014) of the Central Government Industrial Tribunal-cum-Labour Court-1, Hyderabad, as shown in the Annexure, in the Industrial Dispute between the employers in relation to The Principal, Kendriya Vidyalaya No. 2, Visakhapatnam (A.P.) and Others, and their workmen which were received by the Central Government on 06.06.2019.

[No. L-42012/10/2014-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present: Sri Muralidhar Pradhan, Presiding Officer

Dated the 25th day of March, 2019

INDUSTRIAL DISPUTE No. 42/2014

Between:

Smt. Chintala Ramullamma,
D.No. 39-6-59,
Murali Nagar,
Visakhapatnam.

...Petitioner

AND

The Principal,
Kendriya Vidyalaya No.1,
104 Area, Sri Vijyanagar Colony,
Visakhapatnam.(A.P.)- 530 007.

...Respondent

Appearances:

For the Petitioner : Sri D. Jagannadha Murthy, Advocate

For the Respondent : Sri D. Ramesh, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-42012/10/2014-IR(DU) dated 12.3.2014 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 requiring this forum to decide the question:

SCHEDULE

“Whether the action of the management of Kendriya Vidyalaya No.1, Visakhapatnam in terminating the services of Smt. Chintala Ramulamma Ex. Casual Labour is legal and justified? If not, to what relief she is entitled to ?”

On receipt of the reference this Tribunal has registered and numbered the reference as I.D. No. 42/2014 and issued notices to both the workman and the management. They both appeared before the court and engaged their respective counsels with the leave of the court and consent of either party.

2. **The averments made in the claim statement in brief are as follows:**

The Petitioner was appointed as an Attendar on casual basis from 1.8.1993 to 3.5.1997 in the Respondent's organization. At the initial stage she was getting Rs.25/- per day and the same was paid to the workman once in every two weeks through State Bank of India, Visakhapatnam and the Respondent used to obtain signature of the workman in voucher. The attendance of the workman was also being marked every day by the officials of the Respondent's school. It is stated that the Petitioner used to work as attendar on casual basis. Subsequently the Respondent's school increased the wages of the workman from Rs.25/- to 36/- per day. The workman used to perform the duties of cleaning the office, cleaning the tables office rooms and class rooms, cleaning of toilets etc., she also used to take attendance registers/Circulars to every classroom. The school working hours are from 9 AM to 3 PM but the workman was working from 8.30 AM to 5 PM. She was disengaged from her service without any reasons. The workman was discharging her duties without having any remarks and she was most obedient towards her higher authorities. It is further submitted that the Respondent's school orally stated that her services were no more required. The workman was not served with any termination orders. Only she was informed orally by the officials of the Respondent's school. But when the Petitioner requested to take her in service, the officials of Respondent's school refused. The Respondent clearly attributes the malafide intention to curtail the entire service of the Petitioner in the Respondent's organization to avoid the regularization of her services as Attender. The Petitioner further submits that after rendering her services for 4 years 9 months at Kendriya Vidyalaya No.1, she shifted to Kendriya Vidyalaya No.2 and continued the same work upto 2.5.1998. The workman submitted that she had approached the Hon'ble High Court by filing a writ under Article 226 of the Constitution of India with a prayer to direct the Respondent to continue her in service as attender in WP No.14023/98. In the mean while the Petitioner filed a WPMP No. 16892/98 in the above said WP No.14023/98. The Hon'ble High Court on 15.5.1998, passed an order in the above case, "There shall be interim direction to the Respondent to continue the Petitioner provided she is in service as on today." The Petitioner also submitted that as per the orders of Hon'ble High Court, she approached the Respondent and gave one representation letter dated 8.7.1998 to the Respondent. While the matter is pending before the Hon'ble High Court, the Respondent did not obey the orders of the Hon'ble High Court wantonly and refused the service of the Petitioner. Even though the workman/Petitioner submitted the representation letter. The Petitioner workman further submitted that she is a poor SC woman. She could not pursue her case before the Hon'ble High Court against the Respondent due to her financial capacity. Subsequently, the Petitioner did not attend the Hon'ble High Court case because of her poverty and there was no representation on her behalf to prosecute her case, ultimately, the Hon'ble High Court dismissed the writ petition on 7.6.2007 for non-prosecution. The workman submitted that subsequently she filed an application under Sec.12 of the Legal Services Authority Act, 1987 for conciliation and amicable settlement of her matter with the Respondent but it was in vain. The Petitioner also approached the Assistant Labour Commissioner (C), Visakhapatnam and one conciliation proceeding was initiated between the Petitioner and the Respondent on various dates and finally on 15.12.2012, and lastly it ended in failure. The Assistant Labour Commissioner (C), Visakhapatnam sent the failure report to the Government of India, Ministry of Labour and Employment, New Delhi which culminated the present reference. The Petitioner submitted that she discharged her duties to the satisfaction of her superiors and also worked continuously from 1.8.1993 on wards up to the date of disengagement i.e., 2.5.1998 continuously. The Petitioner was not allowed to duty and therefore, it amounts to illegal termination, and no retrenchment compensation was paid to her as per law and as such the action of the Respondent organization is in violation of Sec.25F of the Industrial Disputes Act, 1947. The Petitioner submits that she is a poor lady, her husband and three children are dependants on her and this sudden disengagement of service landed her in severe financial loss. The Petitioner submitted to hold the action of the Respondent management in terminating the services of the Petitioner workman is illegal and unjustified and consequently declare that the said termination is null and void and to reinstate her in service with back wages, continuity of service and other attendant benefits and to grant such other reliefs as this court deem fit and proper in the circumstances of the case.

3. **Respondent filed counter with the averments in brief as follows:**

The Respondent filed counter denying the facts averred in the claim statement. The Respondent in their counter specifically stated that the Respondent organization is an educational institution and the provisions of Industrial Disputes Act, 1947 do not applicable to the services of the employees in the Respondent's organization. It is stated that the Petitioner had filed a writ petition in the Hon'ble High Court of A.P., seeking a direction against Kendriya Vidyalaya-II, Visakhapatnam to continue her in service as an attender. Their Lordships of the Hon'ble High Court of A.P., was

pleased to pass an interim order, dated 15.5.1998 in WPMP No.16892/1998 directing the Respondent to continue the Petitioner in service provided she is in service as on the date of the order. But, even as on the date of the interim order of the Hon'ble High Court of A.P., the Petitioner was not in service and hence she was not continued in service. As against the same, the Petitioner filed a contempt case bearing No.2007/1998. Their Lordships was pleased to dispose of the said application on 24.3.1999 closing the contempt case. Thereafter, the writ petition in WP.14023/1998 was dismissed by an order, dated 7.6.2007, by the Hon'ble High Court of A.P., and as such the Petitioner has exhausted all her remedy in the competent court of law. Therefore, the present petition is not maintainable. It is also stated that the Petitioner was engaged as casual labour on daily wage basis by the then Principal, Kendriya Vidyalaya-I from 6.12.1994. She was engaged only on the working days without continuity of service on holidays, breaks and vacations. She was engaged likewise till 3.5.1997. She was never appointed in any regular vacancy nor was her service continuous. The wages were paid to her for the days she worked on daily wage basis. The Petitioner voluntarily stopped attending to the daily wage work in Kendriya Vidyalaya-I, w.e.f. 4.5.1997 and thereafter she was never engaged in Kendriya Vidyalaya-I at any point of time. The allegation of the Petitioner that the Petitioner was appointed as an attender on daily wage basis in the Respondent's organization since 1.8.1993 at Visakhapatnam and that she was paid wages @ Rs.25/- per day once in every 2 weeks and that the attendance was marked every day by the Respondent organizations are not correct. Further the allegation of the Petitioner that her wages was increased @ Rs.36/- per day and that she used to work from 8.30 AM to 5 PM are also not correct. Further the allegation of the workman that she worked with the Respondent organization without any remarks and that she was disengaged suddenly without any reason by the Respondent and that she was informed that her services were no more required and that she was not served with any termination orders and that inspite of her request the officials of the Respondent refused to take her into service in order to avoid her regularization of services are all false. The Petitioner was neither served with any appointment order nor with termination order, as her services were on daily wage basis. The Respondent also submitted that the Petitioner stopped attending to work on her volition w.e.f. 4.5.1997. Since the Petitioner was engaged on daily wage basis and all her wages upto 3.5.1997 were paid. No further action was taken. It is further submitted that in absence of any appointment, the question of termination does not arise, much less an illegal termination. The Petitioner is not entitled for any notice or pay in lieu thereof or retrenchment compensation. Since Kendriya Vidyalaya is an educational institution the provisions of the Industrial Disputes Act will not apply for her service and she is not entitled for any benefits under the said Act. With the above averments, the Respondent submitted for dismissal of the claim of the Petitioner with exemplary costs.

4. During the course of hearing of the case the Petitioner workman has been examined herself as WW1 and also relied on some documents which are marked as Ex.W1 to W5. The Respondent management has not examined any witness nor relied on any documents on its behalf.

5. I have already heard both the parties in this matter.

6. As per the averments made in the claim statement and the counter the following points are to be determined:-

- I. Whether the action of the Management of Kendriya Vidyalaya No.1, Visakhapatnam in terminating the services of Smt. Chintala Ramulamma, Ex. Casual labour is legal and justified?
- II. If not, to what relief she is entitled to?

7. **Point No.I:** The Learned Counsel for the workman submitted that the Petitioner workman was engaged under the Respondent as an Attendar on casual basis from 1.8.1993 to 3.5.1997. At the initial stage she was getting Rs.25/- per day and it was paid to the workman once in every two weeks through State Bank of India, Visakhapatnam and the Respondent used to obtain signature of the workman in the voucher. The attendance of the workman was also being marked every day by the officials of the Respondent's school. Subsequently the Respondent's school increased the wages of the workman from Rs.25/- to 36/- per day. The workman used to perform the duties of cleaning the office, cleaning the tables, office rooms, class rooms, and cleaning the toilets etc., she also used to take attendance registers/Circulars to every classroom. The school working hours are from 9 AM to 3 PM but the workman was working from 8.30 AM to 5 PM. The workman was discharging her duties without having any remarks and she was most obedient towards her higher authorities. Suddenly, the Respondent's school orally stated that her services were no more required. The workman was not served with any termination orders. Only she was informed orally by the officials of the Respondent's school. It is further contended that she had approached the Hon'ble High Court by filing a writ petition under Article 226 of the Constitution of India with a prayer to direct the Respondent to continue her in service as an attender in WP No.14023/98. In the mean while the Petitioner filed a WPMP bearing No. 16892/98 in the above said WP No.14023/98. The Hon'ble High Court on 15.5.1998, passed an order in that WPMP, "There shall be interim direction to the Respondent to continue the Petitioner provided she is in service as on today." The Respondent did not obey the orders of the Hon'ble High Court and wantonly refused the service of the Petitioner. Thereafter the Petitioner moved the Hon'ble High Court by filing a contempt proceeding. Subsequently, the Respondent appeared before the

Hon'ble High Court. Due to paucity of funds, the Petitioner could not be able to move the Hon'ble High Court. Ultimately, the said WP No.14023/198 was dismissed. The workman moved an application under Sec.12 of the Legal Services Authority Act, 1987 for amicable settlement of her matter with the Respondent, but it was in vain. The Petitioner also approached the Assistant Labour Commissioner (C), Visakhapatnam for redressal and one conciliation proceeding was initiated which was ended in failure. The Respondent did not consider the plight of the workman. The Respondent has disengaged the Petitioner without following the mandatory provisions of Sec.25F of the Industrial Disputes Act, 1947. Therefore, the Petitioner is entitled for payment of compensation as per the decision of the Hon'ble Apex Court reported in AIR 2015 SC page 3473. The Learned Counsel for the Petitioner also submitted that since the Petitioner is a lady, belongs to SC community, atleast she should be engaged as an attender in the school. It is further contended that the action of the Respondent in terminating the services of the Petitioner is illegal and unjustified. Therefore, the court may declare the said termination order as null and void, and to reinstate the Petitioner in service with back wages, continuity of service and other attendant benefits, and to grant such other relief or reliefs as this court may deem fit and proper.

8. On the other hand, the Learned Counsel appearing for the Respondent submitted that the present ID is not maintainable as the Respondent organization is an educational institution. The provisions of Industrial Disputes Act, 1947 is not applicable to the present institution. The Learned Counsel for the Respondent also contended that the Petitioner was engaged as a casual labour on daily wages basis by the then Principal of Kendriya Vidyalaya No.1 from 6.12.1994 and she was engaged only on the working days without continuity of service on holidays, breaks and vacations. She was engaged like wise till 3.5.1997. She was never appointed against any regular vacancy nor her service was continuous. The wages were paid to her for the days she worked on daily wage basis. She was not regular to her duty and she voluntarily left her job, w.e.f.4.5.1997. There after she was not engaged in Kendriya Vidyalaya-I at any point of time. It is further contended that the Petitioner filed one writ petition before the Hon'ble High Court bearing No.14023/98 and also filed one WPMP No.16892/98 with a prayer to direct the Respondent to continue her in service. The Hon'ble Court after hearing the Petitioner passed an order in WPMP16892/98 directing the Respondent to continue the Petitioner in service provided she is in service as on the date of the order. But as on the date of the order the Petitioner was not in service. She was not allowed to continue in service. The Petitioner filed one contempt proceeding against the Respondent before the Hon'ble High Court. But pursuant to the contempt proceeding the Respondent appeared before the Hon'ble Court. Thereafter the Hon'ble Court dropped the contempt proceeding and also dismissed WP No.14023/98. The Learned Counsel for the Respondent further contended that the Petitioner herself stopped attending the work even though she has been engaged to work on daily wages basis, and since the Petitioner workman had been engaged on her daily wage basis, she was paid upto 3.5.1997 and no further dues are pending against the Respondent. Since the Petitioner has not been appointed against any regular vacancy and not discharging her duties continuously, there is no question of violation of the provisions of Sec.25F of the Industrial Disputes Act, 1947. The Respondent is not required to serve any termination notice on the Petitioner nor she has to pay in lieu of notice or any retrenchment compensation to the workman and with the above submissions, the Learned Counsel for the Respondent submitted for dismissal of the claim of the Petitioner with exemplary costs.

9. On consideration of the rival contentions of both the sides and on perusal of the evidence adduced so far it is seen that admittedly the workman was a lady and she has been engaged as an attender on daily wages basis under the Respondent school. She has worked upto 3.5.1997. The workman while examined as WW1 though fully supported the averments made in her chief evidence affidavit but in her cross examination, she admitted that no appointment order was issued to her to work under Kendriya Vidyalaya-I. She further admitted that, Saturday and Sunday are holidays, and she was not doing any work on those days. Initially for two hours work she was paid Rs.25/- per day, and subsequently, it was enhanced to Rs.36/- per day, and she was not paid for Sundays and Saturdays. She clearly admitted that presently she is aged about 66 years. She also admitted about filing of WP No.14023/98. She proved the copy of the order of the Hon'ble High Court passed in WP No.14023/98 which is marked as Ex.W3 and also admitted that she was not in service on the date of receipt of Ex.W3. She further admitted that she has filed contempt proceeding before the Hon'ble High Court, but due to non-appearance of her advocate, the writ petition was dismissed. She proved the copy of the dismissal order passed in WP No.14023/98 as Ex.W5. She declined to the suggestion of the Respondent's school that she has not worked for 240 days in a year. She was not paid for 240 days in any calendar year during her service period in Kendriya Vidyalaya-I. She also admitted that she has not filed any document to show that she has worked for 240 days in any calendar year in Kendriya Vidyalaya-I. The above evidence of WW1 clearly indicates that she has got no appointment order to work under the Respondent school, and she has worked 10(ten) hours in five days in a week and was paid Rs.25/- per day of two hours work only and subsequently the said amount was enhanced to Rs.36/- per day. As per the

admission of the workman she was getting Rs.25/- per day and she was getting the said Rs.25/- for two hours work. She has worked only 5 days in a week. As because she was not working on Saturday and Sunday, the claim of the Petitioner that she has worked 240 days in a calendar year is not correct. Normally, in the schools there is no working hours for 240 days. Further, the workman has admitted that she was getting Rs.25/- per day and that too it is for two hours only. As per her own admission the Petitioner was only working for two hours in a day and maximum ten hours in a week. The claim of the Petitioner that she has worked for 240 days in a calendar year is not accepted and further even though the Hon'ble High Court in WPMP No.16892/98 had directed the Respondent to continue her in service provided, if she is in service as on the date of the order. But when the order of the Hon'ble High Court was received by the Respondent, the workman was not in service, as a result of which the order of the Hon'ble court was not complied and the Petitioner was not able to enjoy the fruits of the order, which clearly indicates that the Petitioner was not in service when the order was passed by the Hon'ble High Court. Since the workman was a daily wage worker, and she has been engaged orally and has not been working against any sanctioned post for a period of more than 240 days in a calendar year and has not worked for more than two hours in a day, she is not entitled for regularization. In Umadevi's case, the Hon'ble Apex Court settled the principle that no casual worker should be regularised by the courts or the State Government and as per concessional provisions of the citizens of the country have a right to contest for the employment and temporary or casual workers have no right to seek for regularization. In the instant case when the Petitioner worked as a casual labour only two hours in a day, and not more than for a period of 240 days in a calendar year and has worked from the year 1993 to 1997 and that too not against a sanctioned post, she is not entitled to get the regularization of her service. The Petitioner is only engaged on daily wage basis in a school. In Umadevi's case 2006(4SCC) 1, the court held that the courts should not accept to issue any direction or absorption/ regularization or permanent continuance of temporary, contractual casual daily wage or adhoc employees. The court has also held that such directions issued could not be said to be inconsistent with the concessional scheme or public employment. The court also held that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in a regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following the process of selection as envisaged by the relevant rules. In view of the Law laid down by the Apex Court, the directions sought for by the Petitioner cannot be granted. The Petitioner was merely a casual worker and she does not have any vested right to be regularised against any post. Further more, the Petitioner has voluntarily left the job from the school. As because when the order of the Hon'ble High Court reached in the hands of the Respondent, the Petitioner was not working in the office for which she was not given the engagement. This shows that the Petitioner was not regular to her duty and has voluntarily left the office. Thus, the action of the Respondent school in terminating the Petitioner Smt. Chintala Ramulamma, from services is justified.

Thus, Point No.I is answered negatively against the Petitioner.

10. **Point No.II:** In Point No.I, it has already been held that the action of the Respondent in terminating the Petitioner from service is legal and justified. But it is to be seen what more relief the Petitioner is entitled to get. In the instant case it is noticed that the Petitioner has worked about 4 years in the Respondent's school. She is now aged about 66 years and there is no chance of her future employment. She has come to the court for the relief of reinstatement in service but even though the Hon'ble Court directed the Respondent to engage the Petitioner in service as an interim arrangement, she could not be able to avail it. The Hon'ble High Court had given direction to the Respondent to continue the Petitioner in service if she was in service as on the date of the order. But by the time when the order was received by the Respondent, the Petitioner was not in service, for which the order of the Hon'ble High Court was not complied by the Respondent. But as it is seen the Petitioner is a lady belonging to SC community, due to want of job and pending of litigation, she was facing lot of hardship. In the opinion of this Tribunal even though the Petitioner is not entitled to get a job. The interest of justice could be best served, if the Petitioner will be given to get Rs.50000/- (fifty thousand) towards compensation. Thus, the Respondent Management is directed to pay compensation of Rs.50000/- (fifty thousand) to the appellant within four months from the date of receipt of the order failing which the Petitioner is at liberty to move the appropriate forum to get the compensation in time.

Thus, Point. II is answered accordingly.

Result:

In the result the reference is answered as follows:

The action of the Management of Kendriya Vidyalaya No. 1, Visakhapatnam in terminating the services of Smt.Chintala Ramulamma Ex.Casual Labour is legal and justified. In the opinion of this Tribunal even though the Petitioner is not entitled to get a job. The Respondent Management is directed to pay compensation of Rs. 50000/- (fifty thousand) to the appellant within four months, from the date of receipt of the order failing which the Petitioner is at liberty to move the appropriate forum to get the compensation in time.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant transcribed by her and corrected by me on this the 25th day of March, 2019.

MURALIDHAR PRADHAN , Presiding Officer

Appendix of evidence

Witnesses examined for the
Petitioner

WW1: Smt. Chintala Ramulamma

Witnesses examined for the
Respondent

NIL

Documents marked for the Petitioner

Ex.W1: Photostat copy of minutes of conciliation proceeding dt.10.7.2013

Ex.W2: Photostat copy of Lr. No.F.Courtcase/KVIJUN/2011-12/386 dt.24.9.2011

Ex.W3: Photostat copy of the order in WPMP No.16892/98 dt.15.5.1998

Ex.W4: Photostat copy of Lr. No.F.14-107/98 KVS(HR)/5592 dt.18.6.1998

Ex.W5: Photostat copy of order in WPNo.14023/98 dt. 17.6.2007

Documents marked for the Respondent

NIL

नई दिल्ली, 7 जून, 2019

का.आ. 1033.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स प्रधानाचार्य, केन्द्रीय विद्यालय नंबर 2, विशाखापत्तनम (ए.पी.) और अन्य एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, हैदराबाद के पंचाट (संदर्भ संख्या 43/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 06.06.2019 को प्राप्त हुए थे।

[सं. एल-42012/11/2014-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 7th June, 2019

S.O. 1033.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 43/2014) of the Central Government Industrial Tribunal-cum-Labour Court-1 Hyderabad, as shown in the Annexure, in the Industrial Dispute between the employers in relation to The Principal, Kendriya Vidyalaya No. 2, Visakhapatnam (A.P.) and Others, and their workmen which were received by the Central Government on 06.06.2019.

[No. L-42012/11/2014-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD**

Present: Sri Muralidhar Pradhan, Presiding Officer

Dated the 25th day of March, 2019

INDUSTRIAL DISPUTE No. 43/2014

Between:

Smt. Chintala Ramulamma,
D.No.39-6-59,
Murali Nagar,
Visakhapatnam

...Petitioner

AND

The Principal,
Kendriya Vidyalaya No.2,
104 Area, Sri Vijyanagar Colony,
Visakhapatnam. (A.P.)- 530 007.

...Respondent

Appearances:

For the Petitioner : Sri D. Jagannadha Murthy, Advocate

For the Respondent : Sri D. Ramesh, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-42012/11/2014-IR(DU) dated 12.3.2014 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 requiring this forum to decide the question:

SCHEDULE

“Whether the action of the management of Kendriya Vidyalaya No.2, Visakhapatnam in terminating the services of Smt. Chintala Ramulamma Ex. Casual Labour is legal and justified? If not, to what relief she is entitled to ?”

On receipt of the reference this Tribunal has registered and numbered the reference as I.D. No. 43/2014 and issued notices to both the workman and the management. They both appeared before the court and engaged their respective counsels with the leave of the court and consent of either party. The Petitioner adopted the claim statement filed by her in ID No.42/2014 as her claim in this case is similar to that case i.e., ID No.42/2014.

2. The averments made in the claim statement in brief are as follows:

The Petitioner was appointed as an Attendar on casual basis from 1.8.1993 to 3.5.1997 in the Respondent's organization. At the initial stage she was getting Rs.25/- per day and the same was paid to the workman once in every two weeks through State Bank of India, Visakhapatnam and the Respondent used to obtain signature of the workman in the voucher. The attendance of the workman was also being marked every day by the officials of the Respondent's school. It is stated that the Petitioner was engaged as an attendar on casual basis. Subsequently the Respondent's school increased the wages of the workman from Rs.25/- to 36/- per day. The workman used to perform the duties of cleaning the office, cleaning the tables, office rooms, class rooms, and cleaning of toilets etc., she also used to take attendance registers/Circulars to every classroom. The school working hours are from 9 AM to 3 PM but the workman was working from 8.30 AM to 5 PM. She was disengaged from her service without any reasons. The workman was discharging her duties without having any remarks and she was most obedient towards her higher authorities. It is further submitted that the Respondent's school orally stated that her services were no more required. The workman was not served with any termination orders. Only she was informed orally by the officials of the Respondent's school. But when the Petitioner requested to take her in service, the officials of Respondent's school refused. The Respondent clearly attributes the malafide intention to curtail the entire service of the Petitioner in the Respondent's organization to avoid the regularization of her services as Attender. The Petitioner further submits that after rendering her services for 4 years 9 months at Kendriya Vidyalaya No.1, she shifted to Kendriya Vidyalaya No.2 and continued the same work upto 2.5.1998. The workman submitted that she had approached the Hon'ble High Court by filing a writ petition under Article 226 of the Constitution of India with a prayer to direct the Respondent to continue her in service as attender in WP No.14023/98. In the mean while the Petitioner filed WPMP No. 16892/98 in the above said WP No.14023/98. The Hon'ble High Court on 15.5.1998, passed an order in the above said M.P., “There shall be interim direction to the Respondent to continue the Petitioner provided she is in service as on today.” The Petitioner also submitted that as per the orders of the Hon'ble High Court, she approached the Respondent and gave a representation dated 8.7.1998 to the Respondent. While the matter is pending before the Hon'ble High Court, the Respondent did not obey the orders of the Hon'ble High Court wantonly and refused the service of the Petitioner. Even though the workman/Petitioner submitted the representation letter. The Petitioner workman further submitted that she is a poor SC woman. She could not pursue her case before the Hon'ble High Court against the Respondent due to her financial capacity. Subsequently, the Petitioner did not attend the Hon'ble High Court case because of her poverty and there was no representation on her behalf to prosecute her case, ultimately, the Hon'ble High Court dismissed the writ petition on 7.6.2007 for non-prosecution. The workman submitted that subsequently she filed an application under Sec.12 of the Legal Services Authority Act, 1987 for conciliation and amicable settlement of her matter with the Respondent but it was in vain. The Petitioner also approached the Assistant Labour Commissioner (C), Visakhapatnam and a conciliation proceeding was initiated between the Petitioner and the Respondent on various dates and finally on 15.12.2012, and lastly it ended in failure. The Assistant Labour Commissioner (C), Visakhapatnam sent the failure report to the Government of India, Ministry of Labour and Employment, New Delhi which culminated to the present reference. The Petitioner submitted

that she discharged her duties to the satisfaction of her superiors and also worked continuously from 1.8.1993 on wards up to the date of her disengagement i.e., 2.5.1998 continuously. The Petitioner was not allowed to duty and therefore, it amounts to illegal termination, and no retrenchment compensation was paid to her as per law, and as such the action of the Respondent organization is in violation of Sec.25F of the Industrial Disputes Act, 1947. The Petitioner submits that she is a poor lady, her husband and three children are dependent on her and this sudden disengagement of service landed her in severe financial loss. The Petitioner submitted to declare the action of the Respondent management in terminating the services of the Petitioner workman is illegal and unjustified and consequently declare that the said termination is null and void and to reinstate her in service with back wages, continuity of service and other attendant benefits and to grant such other reliefs as this court deem fit and proper in the circumstances of the case.

3. Respondent filed counter with the averments in brief as follows:

The Respondent filed counter denying the facts averred in the claim statement. Respondent in their counter specifically stated that the Respondent organization is an educational institution and the provisions of Industrial Disputes Act, 1947 do not applicable to the services of the employees in the Respondent organization. It is stated that the Petitioner had filed a writ petition in Hon'ble High Court of A.P., seeking a direction against Kendriya Vidyalaya-II, Visakhapatnam to continue her in the service as attender. Their Lordships of the Hon'ble High Court of A.P., was pleased to pass an interim order, dated 15.5.1998 in WPMP No.16892/1998 directing the Respondent to continue the Petitioner in service provided she is in service as on the date of the order. But, even as on the date of the interim order of the Hon'ble High Court of A.P., the Petitioner was not in service and hence she was not continued in service. As against the same, the Petitioner filed a contempt case no.2007/1998. Their Lordships was pleased to dispose of the said application on 24.3.1999 closing the contempt case. Thereafter, the writ petition in WP.14023/1998 was dismissed by an order, dated 7.6.2007, by the Hon'ble High Court of A.P. the Petitioner has exhausted her remedy in the competent court of law. Therefore, the present petition is not maintainable. It is also stated that the Petitioner was engaged as casual labour on daily wage basis by the then Principal, Kendriya Vidyalaya-II from 23.8.1997 to 2.5.1998 excluding all holidays, breaks and vacations as stop gap arrangement. Prior to that the Petitioner voluntarily stopped attending the daily wage work in Kendriya Vidyalaya-I, w.e.f. 4.5.1997. Thereafter she was never engaged in Kendriya Vidyalaya-I at any point of time. Further the Petitioner was not on rolls of the Respondent on 15.5.1998 by the time of issue of interim order by the Hon'ble High Court of Andhra Pradesh, as such the order was not affected to the individual. The allegation of the Petitioner that after rendering service for 4 years 9 months at Kendriya Vidyalaya-1 she was shifted to Kendriya Vidyalaya-2 and continued upto 2.5.1998, that she performed her duties without any remarks, and that she was disengaged suddenly without any reason by the Respondent are also not correct. It is submitted that, the allegation that she was not served with any termination orders and that inspite of her request the officials of the Respondent refused to take her into service in order to avoid the regularization of the services as attender and that Kendriya Vidyalaya-1 and this Respondent function as one unit are all false. The Petitioner was engaged as casual labour on daily wages at Rs.36/- per day from 23.8.1997 to 2.5.1998 and with the above averments, the Respondent submitted for dismissal of the claim of the Petitioner with exemplary costs.

4. During the course of hearing the Petitioner workman has been examined herself as WW1 and also relied on some documents which are marked as Ex.W1 to W3. The Respondent management has not examined any witness nor relied on any documents on its behalf.

5. I have already heard both the parties in this matter.

6. In view of the averments made in the claim statement and the counter the following points are to be determined:-

I. Whether the action of the Management of Kendriya Vidyalaya No.2, Visakhapatnam in terminating the services of Smt. Chintala Ramulamma, Ex. Casual labour is legal and justified?

II. If not, to what relief she is entitled to?

7. **Point No.I:** The Learned Counsel appearing on behalf of the workman submitted that the Petitioner workman was engaged as an Attendar on casual basis from 23.8.1997 to 2.5.1998 in the Respondent's organization. She was getting Rs.36/- per day and it was paid to the workman once in every two weeks. The workman used to perform the duties of cleaning the office, cleaning the tables, office rooms, class rooms, and cleaning of toilets etc., she also used to take attendance registers/Circulars to every classroom. The school working hours are from 9 AM to 3 PM but the workman was working from 8.30 AM to 5 PM. The workman was discharging her duties without having any remarks, and she was most obedient towards her higher authorities. Suddenly, the Respondent's school orally stated that her services were no more required. The workman was not served with any termination orders. Only she was informed orally by the officials of the Respondent's school. It is further contended that she had approached the Hon'ble High Court by filing a writ petition under Article 226 of the Constitution of India with a prayer to direct the Respondent to

continue her in service as an attender in WP No.14023/98. In the mean while the Petitioner filed one WPMP No. 16892/98 in the above said WP No.14023/98. The Hon'ble High Court on 15.5.1998, passed an order in the above said WP, "There shall be interim direction to the Respondent to continue the Petitioner provided she is in service as on today." The Respondent did not obey the orders of the Hon'ble High Court and wantonly refused the service of the Petitioner. Thereafter the Petitioner moved the Hon'ble High Court by filing a contempt proceeding. Subsequently, the Respondent appeared before the Hon'ble High Court. But due to paucity of funds, she could not be able to move the Hon'ble High Court. Ultimately, the WP No.14023/98 was dismissed. The workman moved an application under Sec.12 of the Legal Services Authority Act, 1987 for amicable settlement of her matter with the Respondent but it was in vain. The Petitioner also approached the Assistant Labour Commissioner (C), Visakhapatnam for redressal, and for conciliation which ended in failure. The Respondent did not consider the plight of the workman. The Respondent has disengaged the Petitioner without following the mandatory provisions of Sec.25F of the Industrial Disputes Act, 1947. Therefore, the Petitioner is entitled for payment of compensation as per the decision of the Hon'ble Apex Court reported in AIR 2015 SC page 3473. The Learned Counsel for the Petitioner also submitted that since the Petitioner is a lady, belongs to SC community, atleast she should be engaged as an attender in the school. It is further contended that the action of the Respondent in terminating the services of the Petitioner is illegal and unjustified. Therefore, the court may declare the said termination as null and void and to reinstate the Petitioner in service with back wages, continuity of service and other attendant benefits and to grant such other relief or reliefs as this court may deem fit and proper.

8. On the other hand, the Learned Counsel appearing for the Respondent submitted that the present ID is not maintainable as the Respondent organization is an educational institution. The provisions of Industrial Disputes Act, 1947 is not applicable to the present institution. The Learned Counsel for the Respondent also contended that the Petitioner was engaged as a casual labour on daily wages basis by the then Principal of Kendriya Vidyalaya No.2 from 23.8.1997 to 2.5.1998 and she was engaged only on the working days without continuity of service on holidays, breaks and vacations. She was engaged like wise till 2.5.1998. She was never appointed in any regular vacancy nor her service was continuous. The wages were paid to her for the days she worked on daily wage basis. She was not regular to her duty and she voluntarily left her job, w.e.f.2.5.1998. There after she was not engaged in Kendriya Vidyalaya-2 at any point of time. It is further contended that the Petitioner filed one writ petition before the Hon'ble High Court bearing No.14023/98 and also filed one WPMP No.16892/98 with a prayer to direct the Respondent to continue her in service. The Hon'ble Court after hearing the Petitioner passed an order in WPMP16892/98 directing the Respondent to continue the Petitioner in service provided she is in service as on the date of the order. But as on the date of the order the Petitioner was not in service. She was not allowed to continue in service. The Petitioner filed one contempt proceeding against the Respondent before the Hon'ble High Court. But pursuant to the contempt proceeding the Respondent appeared before the Hon'ble Court. Thereafter the Hon'ble Court dropped the contempt proceeding and also dismissed WP No.14023/98. The Learned Counsel for the Respondent further contended that the Petitioner herself stopped attending the work even though she has been engaged to work on daily wages basis and since the Petitioner workman had been engaged on her daily wage basis, she was paid upto 2.5.1998 and no further dues are pending against the Respondent. Since the Petitioner has not been appointed against any regular vacancy and not discharging her duties continuously, no question of violation of the provisions of Sec.25F of the Industrial Disputes Act, 1947 arises. The Respondent is not required to serve any termination notice on the Petitioner nor has to pay in lieu of notice or any retrenchment compensation to the Petitioner and with these submissions, the Learned Counsel for the Respondent submitted for dismissal of the claim of the Petitioner with exemplary costs.

9. On consideration of the rival contentions of both the sides and on perusal of the evidence adduced so far it is seen that admittedly the workman was a lady and she has been engaged as an attender on daily wages basis under the Respondent school. She has worked upto 2.5.1998 in the Respondent's school. The workman while examined as WW1 though fully supported her chief evidence affidavit but in her cross examination, she admitted that no appointment order was issued to her to work under Kendriya Vidyalaya-2. She further admitted that, Saturday and Sunday are holidays, and she was not doing any work on those days. She was paid Rs.36/- per day and she was not paid for the Sundays and Saturdays. She clearly admitted that presently she is aged about 66 years. She also admitted about filing of WP No.14023/98. She proved the copy of the order of the Hon'ble High Court passed in WP No.14023/98 marked as Ex.W3 and also admitted that she was not in service on the date of receipt of Ex.W3. She further admitted that she has filed one contempt proceeding before the Hon'ble High Court but due to non-appearance of her advocate, the writ petition was dismissed. She proved the copy of the order of the dismissal passed in WP No.14023/98 as Ex.W3. She declined to the suggestion of the Respondent bank that she has not worked for 240 days. She was not paid for 240 days in any calendar year during her service in Kendriya Vidyalaya-2. She has also admitted that she has not filed any document to show that she has worked for 240 days in any calendar year in Kendriya Vidyalaya-2. The evidence of WW1 clearly indicates that she has no appointment order to work under the Respondent school and she has worked five days in a week and she was paid Rs.36/- per day for two hours work only. She has worked only 5 days in a week. As because she was not working on Saturday and Sunday, the claim of the Petitioner that she has worked 240 days in a calendar year is not correct. Normally, in the schools there is no working hours for 240 days. The workman has admitted that she was getting Rs.36/- per day and that too it is for two hours in a day only. As per her own admission the Petitioner was only

working for two hours in a day and maximum ten hours in a week. The claim of the Petitioner that she has worked for 240 days in a calendar year is not correct and further even though the Hon'ble High Court in WPMP No.16892/98 directed the Respondent to continue her in service provided, she is in service as on the date of the order. But when the order of the Hon'ble High Court was received by the Respondent, the workman was not in service, that is why she was not able to enjoy the fruits of the order, which clearly indicates that the Petitioner was not in service when the order was passed by the Hon'ble High Court. Since the workman was a daily wage worker and has been engaged orally and has not been working against any sanctioned post for a period of more than 240 days in a calendar year and has not worked for more than two hours in a day, she is not entitled for regularization. In Umadevi's case, the Hon'ble Apex Court settled the principle that no casual worker should be regularised by the courts or the State Government, and as per concessional provisions of the citizens of the country have a right to contest for the employment and temporary or casual workers have no right to seek for regularization. In the instant case when the Petitioner worked as a casual labour and has worked only two hours in a day, and not worked more than 240 days in a calendar year and has worked from the year 1997 to 1998 and not against a sanctioned post, she is not entitled to get the regularization of her service. The Petitioner has only been engaged on daily wage basis in a school. In Umadevi's case 2006(4SCC) 1, the court held that the courts should not accept to issue any direction or absorption/ regularization or permanent continuance of temporary, contractual casual daily wage or adhoc employees. The court has also held that such directions issued could not be said to be inconsistent with the concessional scheme or public employment. The court also held that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in a regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following the process of selection as envisaged by the relevant rules. In view of the Law laid down by the Apex Court, the directions sought for by the Petitioner cannot be granted. The Petitioner was merely a casual worker and she does not have any vested right to be regularised against any post. Further more, the Petitioner has voluntarily left the job from the school. As because when the order of the Hon'ble High Court reached in the hands of the Respondent, the Petitioner was not working in the office for which she was not given engagement. This shows that the Petitioner was not regular to her duty and has intentionally left the office. Thus, the action of the Respondent school in terminating the Petitioner Smt. Chintala Ramulamma, from services is justified.

Thus, Point No.I is answered negatively against the Petitioner.

10. **Point No.II:** In Point No.I, it has already been held that the action of the Respondent in terminating the Petitioner from service is legal and justified. But it is to be seen what more relief the Petitioner is entitled to get. In the instant case it is noticed that the Petitioner has worked about one year in the Respondent's school. She is now aged about 66 years and there is no chance of her future employment. She has come to the court for relief of reinstatement in service but even though the Hon'ble Court directed the Respondent to engage the Petitioner in service as an interim arrangement, she could not be able to avail it. The Hon'ble High Court had given direction to the Respondent to continue the Petitioner in service if she was in service as on the date of the order. But by the time when the order was received by the Respondent, the Petitioner was not in service, for which the order of the Hon'ble High Court was not complied by the Respondent. But as it is seen the Petitioner is a lady belonging to SC community, due to want of job and pending of litigation, she was facing lot of hardship. In the opinion of this Tribunal even though the Petitioner is not entitled to get a job. The interest of justice could be best served, if the Petitioner will be given to get Rs.15,000/- (Fifteen thousand) towards compensation. Thus, the Respondent Management is directed to pay compensation of Rs.15,000/- (Fifteen thousand) to the appellant within four months from the date of receipt of the order, failing which the Petitioner is at liberty to move the appropriate forum to get the compensation in time.

Thus, Point. II is answered accordingly.

Result:

In the result the reference is answered as follows:

The action of the Management of Kendriya Vidyalaya No.2, Visakhapatnam in terminating the services of Smt.Chintala Ramulamma, Ex.Casual Labour is legal and justified. In the opinion of this Tribunal even though the Petitioner is not entitled to get job. The Respondent Management is directed to pay compensation of Rs.15,000/- (Fifteen thousand) to the appellant within four months from the date of receipt of the order, failing which the Petitioner is at liberty to move the appropriate forum to get the compensation in time.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 25th day of March, 2019.

MURALIDHAR PRADHAN , Presiding Officer

Appendix of evidence

Witnesses examined for the
Petitioner

Witnesses examined for the
Respondent

WW1: Smt. Chintala Ramulamma

NIL

Documents marked for the Petitioner

Ex.W1: Photostat copy of minutes of conciliation proceeding dt.10.7.2013

Ex.W2: Photostat copy of the order in WPMP No.16892/98 dt.15.5.1998

Ex.W3: Photostat copy of order in WPNo.14023/98 dt. 17.6.2007

Documents marked for the Respondent

NIL

नई दिल्ली, 7 जून, 2019

का.आ. 1034.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स महाप्रबंधक, आई.जी. मिंग, रंगा रेड्डी हैदराबाद और अन्य एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, हैदराबाद के पंचाट (संदर्भ संख्या 02/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 06.06.2019 को प्राप्त हुए थे।

[सं. एल-16011/04/2009-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 7th June, 2019

S.O. 1034.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 02/2010) of the Central Government Industrial Tribunal-cum-Labour Court-1 Hyderabad, as shown in the Annexure, in the Industrial Dispute between the employers in relation to The General Manager, I.G. Mint, Ranga Reddy Hyderabad, and Others, and their workmen which were received by the Central Government on 06.06.2019.

[No. L-16011/04/2009-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD**

Present: Sri Muralidhar Pradhan, Presiding Officer

Dated the 25th day of April, 2019

INDUSTRIAL DISPUTE No. 2/2010

Between:

The General Secretary,
Hyderabad Mint Employees Union (AITUC),
C/o I.G. Mint, Cherlapally,
Hyderabad – 500 004.

... Petitioner

AND

The General Manager,
I.G. Mint,
IDA Phase, Cherlapally,
Hyderabad, Ranga Reddy District.

...Respondent

Appearances:

For the Petitioner : Sri William Burra, Advocate
For the Respondent : M/s. Raveinder Viswanath & P. Damodar Reddy, Advocates

AWARD

The Government of India, Ministry of Labour by its order No. L-16011/ 4/2009-IR(DU) dated 8.2.2010 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 requiring this forum to decide the question:

SCHEDULE

“Whether the demand of the Hyderabad Mint Employees Union for grant of promotion by the management of General Manager, I.G. Mint, Hyderabad to Shri Md. Ali to the post of Asstt. Class-I w.e.f. 2005 is legal and justified? If yes, what relief the workman is entitled to?”

On receipt of the reference this Tribunal has registered and numbered the reference as I.D. No.2/2010 and issued notices to both the workman and the management. They both appeared before the court and engaged their respective counsels with the leave of the court and consent of either party.

2. The averments made in the claim statement in brief are as follows:

In the claim statement, it is submitted that the workman Sri Md. Ali being a member of the Petitioner union was appointed as mazdoor on 3.6.1974 in the Respondent's management. He was promoted to Gr.V, Gr. IV and thereafter to Gr.III and then as Gr. II. In the year 2008 he was promoted as Assistant Class I. and in the present dispute the Petitioner union is challenging the promotion of the workman to Assistant Class I which he got in the year 2008, as he is entitled to get that promotion in the year 2005 itself. It is submitted that the Petitioner union raised this dispute before the Assistant Labour Commissioner (C), Hyderabad, who convened a conciliation to the dispute and after prolonged discussions, the conciliation was ended in failure and the matter was referred to the Government of India, New Delhi. Thereafter the Government of India referred the dispute to this Tribunal for adjudication. It is further submitted that Sri Md. Ali, T.No.661 joined in the Respondent management on 3.6.1974 and was promoted to the post of AC-II in the year 1992 and thereafter the workman was in the impression that he would get promotion to the next higher grade i.e., Assistant Class I in due course according to his turn. But to his utter surprise, he was not considered for promotion by the Respondent management without any reason. It is further submitted that some of the employees who joined in the Respondent's unit about six months later were promoted to AC-I in the year 2005 ignoring the seniority of the workman i.e., Md. Ali. It is also submitted that when the promotion for AC-I was given to seven employees who were juniors to Sri Md. Ali, the Respondent management deliberately not displayed the seniority list on the notice board, depriving the workman to know the outcome of promotion matter. Therefore, Sri Md. Ali could not represent the management about his eligibility and entitlement for promotion. It is further submitted that the matter was taken up with the management for redressal of the grievance of the workman. But the Respondent management paid deaf ear to it. Thereafter the workman filed an application before the Hon'ble Central Administrative Tribunal, Hyderabad bearing No.1269/2003 for restoration of his seniority as well as seeking promotion. But the said OA was dismissed on the ground that the claim of the workman was barred by time. hence, the management is not inclined to reopen the case of the workman for promotion. It is stated that the workman is therefore entitled to get promotion to AC-I from the year 2005 and consequential further promotion and financial benefits accrued thereof. The action of the management in not giving promotion to the workman in time is arbitrary, illegal, against the provisions of the Industrial Disputes Act, 1947 and also against the principles of natural justice. Therefore, the Petitioner union has filed this petition with a prayer to direct the Respondent management to give promotion to the workman Sri Md. Ali with retrospective effect and pay consequential higher pay benefit and promotions in the interest of justice.

3. The Respondent filed counter with the averments in brief as follows:

The Respondent in its counter while challenging the maintainability of the claim of the Petitioner, denied the facts averred in the claim statement. The Respondent in its counter submitted that pursuant to the decision of the Union Cabinet on 2.9.2005 the Government of India had decided to corporatize the existing functions of the following 9 units of the Department of Economic Affairs:-

“1. Currency Note Press, Nasik; 2. Bank Note Press, Dewas; 3. India Security Press, Nasik; 4. Security Printing Press, Hyderabad; 5. Security Paper Mill, Hoshangabad; 6. India Government Mint, Kolkata; 7. India Government Mint, Mumbai; 8. India Government Mint, Noida; 9. India Government Mint, Hyderabad”. Accordingly the function of the above nine units were transferred to Security Printing & Minting Corporation of India Limited. Thereafter a dispute was raised before the Chief Labour Commissioner (C) by various unions/ Associations of all the Mints/ Presses hesitating to the corporatization of mints/presses. This conciliation proceeding ended with a Memorandum of Settlement under Section 12(30) of Industrial Disputes Act, 1947 before the Chief Labour Commissioner (C) on 15.9.2008. In terms of the settlement, option forms shall be submitted by the employees latest by 31.10.2008 and the effective date of absorption shall be 1.11.2008, the employees were given options as under:

Option-I:

I hereby opt for permanent absorption in SPMCIL w.e.f. 1.11.2008 and exercise the following option, for settlement of pensionary benefits:-

- i) To receive pro rata pensionary benefits for service rendered in the Government or
- ii) To receive pensionary benefits for the combined service rendered in the Government and future service in the corporation as per the CCS (Pension) Rules, 1972 as applicable to Central Government Employees at the time of superannuation from the Corporation.

Option-II:

I want to continue in Government Service and;

- (iii) May be referred to the Retraining and Redeployment Division of the Department of Personal and Training for redeployment, if I do not opt for VRS under DOP&T's Special Voluntary Retirement Scheme for surplus employees within 3 months from the specified date*

*(For employees borne on the Cadre of Mints/Presses and Paper Mill)

OR

- (iv) I want to continue in the Government service and may be repatriated to my parent cadre**

** (For employees borne on the Cadres, such Civil Accounts, Ministry of Labour, Ministry of Health etc.).

It is stated that the Petitioner exercised option to continue in Government service and preferred to be referred to the Retraining and Redeployment Division of the Department of Personal and Training for Redeployment, if the Petitioner doesn't opt for Voluntary Retirement Scheme under DOP&T's Special Voluntary Retirement Scheme for surplus employees within 3 months from the specified date. By exercising the option to continue in Government Service the Petitioner has ceased to be the corporate employee and hence his claim for promotion from 2005 is not in the purview of the corporation. The Respondent while challenging the claim of the Petitioner has specifically stated that there is basically no ground for claiming promotion of the workman from the year 2005. In fact promotion from 2005, was not only an after thought by the claimant while the conciliation proceeding were on; but also based on false notion that he was superseded by his juniors, the claimant had raised an industrial dispute before the conciliation officer regarding his seniority and the said representation was forwarded to the Respondent by the Assistant Labour Commissioner (C) vide his letter No.8/111/2007-E3, dated 3.8.2007. The Respondent in reply to the said letter of the conciliation officer, informed that the claimant herein has filed an OA bearing No.1269/2003 before the Hon'ble Central Administrative Tribunal which was dismissed by the Tribunal vide order dated 8.10.2006. The Tribunal is of the opinion that the cause of action for the grievance of the applicant in the above OA had arisen as long back as in 1980 and hence, the OA is hopelessly barred by time. It is the settled provision of Law, that the seniority positions notified long back cannot be unsettled after a considerable lapse of time only for the reason that the affected party was ignorant of his position and rights at the relevant point of time. The Respondent further submitted that as directed by the conciliation officer, to file comments on the dispute, the Respondent submitted fresh comments stating that the records were verified and found that the contention of the claimant that he was shown junior to 8 workmen is unfounded and he was junior to the workmen who alleged to have superseded him and as such there exists no dispute regarding seniority. It is further stated that the Respondent has informed before the conciliation officer stating that since the matter has already been adjudicated by the Hon'ble Central Administrative Tribunal, the claimant cannot invoke the jurisdiction of the conciliatory forum on the same pretext or other and the dispute is vexatious and frivolous in nature as the matter has been settled once for all which cannot be reopened again and again. It is also stated that the conciliation officer in presence of the claimant in the

conciliation meeting held on 29.2.2008 has suggested the Respondent to examine the contention of the claimant that some ore juniors to the claimant were promoted in the year 2005, the Respondent informed to the conciliation officer vide their office letter No.1-29/Per/2006-07/3701 dated 12.3.2008 stating that the said suggestion of the conciliation officer was examined afresh and no junior to Sri Md. Ali, T. No.661, to the claimant herein was promoted in the year 2005 as alleged by the claimant and further requested the conciliation officer to close the dispute as a failure without prejudice to the judgement of the Hon'ble Central Administrative Tribunal passed in OA No.1269/2003 dated 8.10.2006. The Respondent also submitted that in continuation to the office letter dated 12.3.2008 in response to the suggestion of the conciliation officer for consideration of promotion of the claimant from 2007, which was informed to him vide this mint lr. No.1-29/Per/2007-08/3814, dated 24.3.2008 stating that the promotion of Sri Md.Ali, the claimant herein would be considered as per rules, subject to his eligibility, by the Departmental Promotion Committee as and when it was convened. The Respondent also submitted that in the above letter dated 24.3.2008, this Mint vide its letter No.1-29/Per/2008, dated 30.7.2008 addressed to the conciliation officer stated that the case of Sri Md. Ali, T.No.661 was examined afresh by convening D.P.C., and accordingly he is being promoted to the post of AC-I with immediate effect. The Respondent also submitted that again in response to letter No. 8/16/2009-E3, dated 16.9.2009 of the Assistant Labour Commissioner (C), Hyderabad it was informed that in view of this Mint letter dated 11.9.2007 for its comments those were furnished and also in the light of the order dated 8.10.2006 of the Hon'ble Central Administrative Tribunal, Hyderabad it had been informed that the dispute may be closed as the same is not to consider as per rules and ultimately, the dispute ended in failure. The Respondent further submitted that in view of the orders of the Hon'ble Central Administrative Tribunal vide order dated 8.10.2006 and as no one junior to Sri Md. Ali, claimant was promoted in 2005, the claim of the Petitioner is devoid of any merit and liable to be dismissed in limini with costs.

4. Subsequent to the counter, the Petitioner union submitted one rejoinder, stating therein that the workman is senior to S/Sri G. Krishna, Mohd Siddique, Mohd. Sayeeruddin, T. Ravinder, N. Ramulu, Surendar Reddy and Abdul Khalem as could be seen from the confirmation order published in daily order No.30 dated 27.8.1984. Wherein the Petitioner's name was at serial No.124, whereas the names of Sri G. Krishna and others were at 125 and 131. It is also pertinent to submit that the Petitioner, Sri Mohd. Ali was promoted on 1.1.1982 to AC-III grade whereas the seven persons named above were promoted to the said grade on 1.5.1982. viewed from any angle the Petitioner is senior to seven employees whose names are given above. The daily order 14.4.1982; 22.7.1982 and 27.8.1984 are filed separately in support of the above contention. The contention of the Respondent that the workman had filed OA No.1269/2003 and the said OA was dismissed by the Hon'ble Central Administrative Tribunal is also false and the OA was dismissed on the ground that the application is time barred. Hence, the contention of the Respondent is liable to be rejected. It is further submitted that the workman is senior to 7 persons whose name are mentioned above. The Petitioner has mentioned that there is illegality or irregularity in the reference made by the central Government to this Tribunal and with the above averments the Petitioner submitted to consider the promotion of the workman with retrospective effect from the year 2005.

5. As per the averments made in the claim statement as well as in the counter and rejoinder filed by the parties, the following points are to be determined:

- I. Whether the demand of Hyderabad Mint Employees Union for grant of promotion to the workman by the management of General Manager, I.G. Mint, Hyderabad to Shri Md. Ali to the post of Asstt. Class-I w.e.f. 2005 is legal and justified?
- II. If yes, what relief the workman is entitled to?

6. During the course of hearing of this case, the Petitioner union has examined the workman as WW1 and also relied on 7 documents which are marked as Ex.W1 to W7. But the workman was not cross examined by the Respondent Management and the Respondent has also not adduced any evidence.

7. I have already heard the Petitioner in this matter.

8. **Point No.I:** The Learned Counsel for the Petitioner contended that the workman Sri Md. Ali was appointed as a mazdoor on 3.6.1974 in the Respondent's management. Later he was promoted to Gr.V, Gr. IV and thereafter to Gr.III and then as Gr. II as the promotion due to him and there was no doubt about his promotion. The present dispute is with regard to the promotion of the workman as Assistant Class I, which he got in the year 2008, whereas the workman

is entitled to get that promotion in the year 2005 itself. He also contended that the next promotion of the workman was to the post of A.C.I, and that he would have been promoted to the said post in the year 2005, but the promotion was virtually given to him in the year 2008 which he has challenged before this Tribunal by filing the present claim petition. It is contended that the workman is senior to S/Sri G. Krishna, Mohd Siddique, Mohd. Sayeeruddin, T. Ravinder, N. Ramulu, Surendar Reddy and Abdul Khalem as could be seen from the confirmation order published in daily order No.30 dated 27.8.1984. Wherein the Petitioner's name was at serial No.124, whereas the names of Sri G. Krishna and others were at 125 and 131. It is also argued that the Petitioner, Sri Mohd. Ali was promoted on 1.1.1982 to AC-III grade whereas the seven persons named above were promoted to the said grade on 1.5.1982. Viewed from any angle the Petitioner is senior to seven employees whose names are given above. The daily order dated 14.4.1982 which was marked as Ex.W6; order dated 22.7.1982 and 27.8.1984, which was marked as Ex.W7, had been filed from the side of the Petitioner union for reference of this Tribunal. It is also contended that the seven employees mentioned above joined in the Respondent's unit about six months later of the joining of the workman, but they are promoted to A.C. I in the year 2005, ignoring the seniority of the workman Sri Md. Ali. It is further contended that the workman came to know that his juniors have been given promotion earlier in the year 2005, then he represented before the management but the management ignored the representation of the workman. Thereafter, the workman had filed OA No.1269/2003 before the Hon'ble Central Administrative Tribunal for restoration of his seniority and consequential monetary benefits. But the said OA was dismissed by the Hon'ble Central Administrative Tribunal on the ground that the claim is time barred. Hence, the workman raised this dispute through the Petitioner's Union before the Assistant Labour Commissioner (C). But even though conciliation was made it was ended in failure and ultimately, the dispute was referred to this Tribunal. He also contended that even though the Respondent management has filed counter on 6.4.2016, but the averments made therein have not been supported by any oral or documentary evidence. Hence, the claim of the Respondent cannot be accepted. Since the Respondent has not come forward to challenge the claim of the workman, the claim of the workman is to be considered favourably and lastly he submitted that the workman Sri Md. Ali may be given promotion with retrospective effect from the year 2005 along with all other consequential benefits in the interest of justice.

9. On a careful scrutiny of the evidence adduced from the side of the workman it is seen that the workman has fully corroborated the facts averred in the claim statement. The workman has relied on 7 documents which have been marked as Ex.W1 to W7. The Respondent has not come forward to challenge the claim of the workman as well as the documents relied on by the workman in his chief evidence affidavit. In his examination in chief the workman has fully supported the averments made in his claim statement. Admittedly, the workman has filed one OA bearing No.1261/2003, claiming his promotion before the Hon'ble Central Administrative Tribunal who has rejected the claim of the workman on ground that the claim is time barred. Though several opportunities have been given to the Respondent, to challenge the claim of the workman the Respondent has failed to avail the same. The unchallenged testimony of the workman well proves that the workman has got a good case to raise before this forum. In this dispute the workman has also raised that his juniors have been given promotion to the post of A.C. I in the year 2005, but he was given promotion to the said rank in the year 2008. In fact the workman should have challenged the promotion given to his juniors soon after issuance of the office order. But in this case the workman has not done so. The claim of the workman that he was not given information about the publication of the office order and after getting the information he moved the Hon'ble Central Administrative Tribunal by filing one OA. But that OA was rejected on the ground of limitation. In fact seeking promotion is not a matter of right. Even though the juniors of the workman have been given promotion immediately after the promotion order is passed, the workman should have moved the authority. But the workman has not done so in time. The claim of the workman that he was not given the information of promotion in time is not a good ground to accept. The similar claim has been disallowed by the Hon'ble Central Administrative Tribunal. Again the workman has agitated the same claim before this Tribunal through his union which is not at all maintainable and as such, the reference is not maintainable as the same is barred by time. Therefore, it can safely be held that the demand of the Hyderabad Mint Employees Union for grant of promotion by the management of General Manager, I.G. Mint, Hyderabad to Shri Md. Ali to the post of Asstt. Class-I w.e.f. 2005 is not legal and justified.

Thus, Point No.I is answered accordingly.

10. **Point No.II:** in view of the findings given in Point No.I, it is held that the workman is not entitled to get any relief.

Thus, Point No.II is answered accordingly.

Result:

In the result, the reference is answered as under:

The demand of the Hyderabad Mint Employees Union for grant of promotion by the management of General Manager, I.G. Mint, Hyderabad to Shri Md. Ali to the post of Asstt. Class-I w.e.f. 2005 is not legal and justified. Hence, the workman Shri Md. Ali is not entitled to get any relief.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant transcribed by her and corrected by me on this the 25th day of April, 2019.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the
Petitioner

Witnesses examined for the
Respondent

WW1: Sri Md. Ali

NIL

Documents marked for the Petitioner

- Ex.W1: Photostat copy of Ir. dt.26.2.2008 of the Petitioner Union to the ALC(C), Hyderabad
 Ex.W2: Photostat copy of representation dt. 27.11.2007 of the Petitioner Union to the ALC(C), Hyderabad
 Ex.W3: Photostat copy of Ir. dt.26.8.2009 from ALC(C), Hyderabad to the Petitioner union and the Respondent management
 Ex.W4: Photostat copy of Ir. dt. 12.3.2008 from Respondent to ALC(C), Hyderabad
 Ex.W5: Photostat copy of seniority, of diary order, dt. 22.7.1982 from General Manager to workman
 Ex.W6: Photostat copy of seniority, of diary order No.4 dt. 14.4.1982 from General Manager to workman
 Ex.W7: Photostat copy of confirmation diary order No.30 dt.27.8.1984 From General Manager to workman

Documents marked for the Respondent

NIL

नई दिल्ली, 11 जून, 2019

का.आ. 1035.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंधन के संबंध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण पटना के पंचाट (संदर्भ संख्या 03 (C) of 2017) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11.06.2019 को प्राप्त हुआ था।

[सं. एल-12025/01/2019-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 11th June, 2019

S.O. 1035.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. Case No. 03 (C) of 2017) of the Tribunal-cum-Labour Court Patna as shown in the Annexure, in the Industrial Dispute between the Management of State Bank of India and their workmen, received by the Central Government on 11.06.2019.

[No. L-12025/01/2019-IR (B-1)]

B. S. BISHT, Under Secy.

ANNEXURE**BEFORE THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, PATNA****Reference Case No. 03 (C) of 2017**

Between the management of The Chief General Manager, SBI, Local Head Office, West Gandhi Maidan, Patna-1 and their workman Sri Ram Vinay Singh, Ex-messenger, S/o- Sri Nalish Singh, Vill.- Makhdumpur, P.O-Arwal, Dist.- Arwal.

For the management: Sri Manish Kumar, Law Officer
 Sri Vivek Krishna Ranjan, Law Officer

For the Workman: Sri B. Prasad, General Secretary

Present: Vishweshwar Nath Mishra Presiding Officer, Industrial Tribunal, Patna

AWARD

Patna, dated: 20th May, 2019

By the adjudication order No.-L-12012/79/2016-IR(B-I) dated- 24.05.2017 the Govt. of India, Ministry of Labour, New Delhi has referred under clause (d) of sub-section-(1) and sub-section-(2A) of section-10 of the Industrial Dispute Act, 1947, (hereinafter to be referred to as “ the Act”), the following dispute between The Chief General Manager, SBI, Local Head Office, West Gandhi Maidan, Patna-1 and their workman Sri Ram Vinay Singh, Ex-messenger, S/O- Sri Nalish Singh, Vill.- Makhdumpur, P.O- Arwal, Dist.- Arwal. for adjudication to this tribunal:-

SCHEDULE

“Whether the action of the management of SBI, Local Head Office, Patna in terminating the service of Ram Vinay Singh, Ex-messenger w.e.f. 01.10.1998 is justified? If not, to what relief the workman concern is entitled to?”

2. The case of the workman Sri Ram Vinay Singh is that he was orally appointed by the management of State Bank of India to discharge the duties of a messenger at Arwal Branch w.e.f. 30.08.1996. He worked from 30.08.1996 to 31.08.1997 at Arwal branch intermittently and discharged the duties of a messenger. The further case of the workman is that from 01.09.1997 to 30.09.1998 he worked continuously as messenger at Arwal branch and discharged the following duties:-

- i. Opening of Bank's Gate;
- ii. Taking out ledgers / registers from the almirah, placing the same on tables, counters and vice-versa;
- iii. Taking out cash from strong room, placing the same on counter and vice versa;
- iv. Stiching of vouchers and currency notes;
- v. Posting of mails to Post- Office;
- vi. Distribution of Letters through Peon Book;
- vii. Cleaning, sweeping the branch premises;
- viii. Cleaning tables, Chairs and counters;
- ix. Serving water, tea to the members of staff etc;

The workman used to discharge his duties from 9.00A.M to 6.00P.M regularly and some times even beyond that as per the instruction of the branch manager. The workman used to be paid wages @ Rs. 30/- per day. The branch was not having any sweeper, messenger, watch and ward staff during the period of working of Ram Vinay Singh. The duties of the workman were perennial in nature. On 01.10.1998 when the workman went to perform his duties as usual, he was stopped from working and was informed of termination of his services. The workman worked for more than 240 days in 12 calendar months preceding his termination. The management violated the mandatory provisions as contained in section 25F of the I.D.Act, as neither any notice nor any notice pay, nor any retrenchment compensation was paid to the workman. The management formulated schemes from time to time in 1997, 1999, 2002 for permanent absorption of the services of the workmen who had worked for 240 days in 12 calendar months, but the case of the workman was not considered. The name of the workman forwarded on 27.07.2002, but no positive action was taken by the management.

On the wrong advice of the lawyer, the workman approached the Hon'ble High Court of Judicature at Patna and filed a Writ Petition in the year 2004. The Hon'ble Single Bench passed some order which was challenged by the management through LPA before the Division Bench who disposed off the Appeal (LPA No.- 1585 of 2010 in C.W.J.C No.- 11805 of 2010) on 21.04.2016. In view of the observation of the Hon'ble Court, the workman approached the Regional Labour Commissioner (Central) Patna and raised an Industrial Dispute on 18.05.2016 which culminated in reference before this Tribunal.

The workman has prayed for reinstatement in the services of the State Bank of India as a temporary messenger with back wages as well as regularization of his services as a messenger.

3. In this case the management has also filed his written statement stating therein that in fact the workman Sri Ram Vinay Singh, is not an employee of the State Bank of India. As the workman Ram Vinay Singh was not an employee of the bank, therefore, no question arises that he was a messenger in the bank and at no point of time the management terminated his service. The further case of the management is that the bank at Arwal Branch had a Canteen Committee which used to regulate the canteen arrangement in the bank for the staff. Such committee used to regulate, run and provide service independently without any control of the bank. The bank utmost, casually used to provide subsidy to the committee, such committee used to engage person purely on casual basis to run the canteen and also used to regulate the service condition of such person. Payment of any remuneration to such person was the responsibility and concern of the Canteen Committee and not of the Bank. It was the discretion of the committee to engage and disengage such person. The bank is not concerned with the engagement or dis-engagement of any canteen boy. The concerned person might be working under the aforesaid conditions in the branch but however the real responsibility lies upon the committee. The branch manager of State Bank of India has no power to appoint any person in subordinate cadre. The recruitment is regulated by the Bank's Recruitment Rules which has got statutory force. The bank denied the statement relating to discharge of duty by the concerned person except that he may be serving as a Canteen Boy under the control and supervision of the Canteen Committee (LIC). The Bank is not concerned with his duty hours nor the branch manager was authorized to give any instruction relating to the duties to be performed by the concerned person. The concerned person has no right to demand reinstatement and regularization of his service in Bank as he was not an employee of the Bank nor he was entitled for payment of any minimum wages since Bank was not employer. It is wholly wrong to say that the Bank stopped him from working with effect from 01.10.1998. As such compliance of any provision of Industrial Dispute Act, neither was required nor warranted. The Bank has its own recruitment rules for appointment of subordinate cadre staff. Shri Ram Binay Singh was never issued any appointment letter by the Bank nor he was ever engaged by the Bank to perform duties of a messenger. Any recruitment on a perennial post and / or absorption / regularization are regulated by the Bank's recruitment Rules which has got statutory force.

FINDINGS

4. In this case only workman Sri Ram Vinay Singh got himself examine as a witness and no other person has been examined on his behalf in support of his case.

This witness in his deposition has stated that he used to work as a messenger in the Arwal Branch of State Bank of India. This witness in para-2 of his deposition has stated about the various nature of work he used to perform in the branch of the bank during the working hours as has been stated in his statement of claim. He has further stated that he used to work in the branch of the bank from 9.00A.M to 6.00P.M. He worked in the bank from 30.08.1996 to 30.09.1998. He used get a sum of Rs. 30/- per day as wages, although he used to perform the same work which is being performed by a permanent messenger. He has further stated that while he was working in the branch of the bank, no other person was there as a bank guard, messenger or sweeper. The then bank manager Sri Om Prakesh Sahu gave a letter on 27.07.2002 to the Zonal Office for absorption of the workman Sri Ram Vinay Singh in bank's, permanent service. This witness has identified the letter of the then Branch Manager which has been marked as Ext.- W in this case. This witness has further identified the letter dated-08.01.2003 written by the then Branch Manager Sri Om Prakash Sahu to Assistant General Manager, Zonal Office, Patna which has been marked as Ext.-W/1. This witness has further proved the payment vouchers which are Ext.-W/2 to W/2-10, which denote that he was paid for the work he had performed in the branch from 01.07.1997 to 31.07.1998. These vouchers are in the handwriting of the workman and they also bear the signature of branch manager and there is also the signature of one Daroga Singh who was the bank guard. This witness has further stated that before removing him from service he was neither given any notice, nor notice pay or compensation.

This witness in his cross-examination has admitted that no appointment letter was given to him for his engagement in the bank. He was removed from the service of the bank w.e.f 01.10.1998. He has stated that the then Branch Manager of the State Bank of India engaged him in the branch on verbal order and no appointment letter was issued in his favour. This witness has denied the suggestion during cross-examination that he was engaged by the local implementation committee as a Canteen Boy. He has further stated that he approached the Hon'ble Patna High Court for his reinstatement. This witness has stated that he was engaged in the bank as a daily wager and he was paid for the same by the branch manager and he was neither engaged as a Canteen Boy in the branch nor was paid for the same.

5. Two witnesses have been examined on behalf of the management namely M.W-1 (Santosh Kumar) and M.W-2 (Perwez Akhtar).

M.W-1 (Santosh Kumar) in his deposition has stated that he is posted in the Arwal Branch since 2017. He has stated that he does not recognized the workman and he never saw him in the branch. This witness has further stated that there is one local implementation committee in the branch of the bank and he being the branch manager is ex-officio chairman of that committee and accountant Sri Praveen Kumar Verma and one Perwez Akhtar are members of the committee but at present no Canteen Boy is engaged in the branch. In absence of the Canteen Boy the work of cleaning of the branch has been outsourced. He has further stated that he cannot say that any Canteen boy or daily wages employee has been absorbed in the bank or not. This witness has further said that after getting notice from the tribunal he came to know that one Ram Vinay Singh was engaged in the branch as a Canteen Boy. After getting notice from this tribunal he searched the paper relating to Ram Vinay Singh but he did not find any paper regarding him in the branch. He has further stated that he was never posted in the Arwal Branch of the State Bank of India between 1997 to 1998.

M.W-2 (Perwez Akhtar) in his deposition has stated that he was engaged as field officer in the Arwal Branch of the State Bank of India between July 2015 to May 2018. At relevant time one Santosh Kumar was the President of the local implementation committee but during that period no Canteen Boy was engaged in the branch. He met only once the workman Sri Ram Vinay Singh in the branch.

This witness in his cross-examination has stated that he does not know about this case because the same was not during his period. He has come here as a witness on the notice of the bank management.

6. The learned representative of the workman submitted that the workman was orally appointed by the management of State Bank of India to discharge the duties of a messenger at Arwal Branch. He worked intermittently from 30.08.1996 to 31.08.1997 and from 01.09.1997 to 30.09.1998 he worked continuously but when he went to perform his duties on 01.10.1998, he was stopped from working and he was informed that his services has been terminated. According to the workman the provisions of 25-F of the I.D.Act were violated in the present case because neither any notice, nor notice pay nor any retrenchment compensation was given to the workman. It was further submitted that the management bank time to time formulated different schemes in the year 1997, 1999 and 2002 for permanent absorption of the services of temporary workman who worked for 240 days in 12 calendar months and accordingly the then Branch Manager Sri O. P. Sahu forwarded the name of this workman for considering his case for permanent absorption in the services of the bank as a messenger. In this regard he pointed out the Ext.-W which is letter dated-27.02.2002 sent by the then Branch Manager Sri O.P. Sahu to Zonal Office, Patna. The Ext.-W/1 is another documents dated-08.01.2003 sent by the same the then Branch Manager Sri O.P.Sahu to the Assistant General Manager, Zonal Office, Patna regarding the work done by the workman and the wages paid to him by the branch.

7. The learned representative of the workman further submitted that the workman used to discharge all the duties on the instruction of the Branch Manager and his duties were identical to that of a permanent messenger and perennial in nature. Ram Vinay Singh working with the management for about two years and performing the duties of a messenger attained the status of a workman. The services of Ram Vinay Singh wa not utilized as a canteen boy but he discharged all the duties of a messenger. The workman was not connected with any canteen committee. The case of the present workman Ram Vinay Singh was fully covered under the scheme formulated by the management but the management failed to consider his services favourily. The learned representative of the workman further submitted that the workman in his deposition has fully supported his case. But on the other hand two witnesses examined on behalf of the management are not witnesses which are any help to the management because none of them was fully aware of the facts of the case of the workman Ram Vinay Singh and none was posted in the branch at the relevant time when the workman is said to be employed in the branch.

8. The learned representative of the workman relied upon four decisions three of them of the Hon'ble Apex Court and one is of Hon'ble Patna High Court.

The learned representative of the workman relied upon decision of the Hon'ble Supreme Court in the case of T. Nadu Termd. Full Time Tem.Lic.... Vs Life Insurance Corp. of India & Ors on 18 March, 2015. But in my view this case is not at all applicable in the facts and circumstances of the present case because in the aforesaid case before the Hon'ble Supreme Court the matter of the workman working in the LIC was concerned who were working as a temporary, Badli and part-time workman appointed by the management of the corporation on daily wage basis against the leave vacancies and other vacancies of its employees in class III and IV posts. In the case before this tribunal it has been specifically denied by the management regarding the appointment / engagement of the alleged workman Sri Ram Vinay Singh in the bank.

The learned representative of the workman further relied upon decision of the Hon'ble Supreme Court in the case of Harjinder Singh Versus Punjab State Warehousing Corp. on 5th January, 2010. The matter before the Hon'ble Supreme Court was regarding violation of the rule of last-come-first go inasmuch as persons junior to the workman were retained in service. In that very case the workman was retrenchment because the project on which he was employed had been completed. That is not the matter in the present case and as such the aforesaid decision of the Hon'ble Supreme Court relied upon by the workman is also not at all applicable in the facts and circumstances of the case.

Third decision the learned representative of the workman has relied upon is a decision of the Hon'ble Supreme Court delivered on 25.01.2019 Civil in Appeal No.- 1135 of 2019 in the case of Mintu Kumar Versus the management of Punjab National Bank, Zonal Office, Muzaffarpur, Bihar. That was the case of one Mintu Kumar who was engaged by the management bank as sub-staff on regular basis. It is apparent that this ruling is also not applicable in the facts and circumstances of the case in this tribunal because the engagement of the workman has been denied by the management.

The learned representative of the workman has further relied upon a decision of the Hon'ble Patna High Court delivered on 8th April, 1994 in the case of Mithilesh Kumar Singh Versus State of Bihar And Ors. In that very case the workman was initially appointed on muster-roll as a daily wager. He continuously worked for over three months and thereafter he was appointed in a regular time-scale of pay as a Treasure Guard on a temporary and adhoc basis.

I am sorry to say that this ruling relied upon by the workman also do not support his case and as such not applicable in the facts and circumstances of the case before this tribunal because the management has denied the fact that the workman was ever appointed by him.

9. The learned representative of the management submitted that the alleged workman Sri Ram Vinay Singh was neither appointed as a messenger by the management nor he was ever terminated from the service. The branch manager of Arwal Branch had no authority to appoint / engage any person even temporarily. Management also denied the fact that bank ever took any work from him as a temporary messenger. The workman worked as a canteen boy as per instruction of the local implementation committee of the Arwal Branch. He further submitted that Arwal Branch used to run a canteen under a committee, called the local implementation committee which consists of the employees posted in the concern branch and is headed by the concern branch head as President. Such local implementation committee used to engage canteen boy and takes his services to run such canteen. The management bank has no concern to such canteen boy nor his services are utilized by the bank in any manner. Such committee used to regulate run and provide service independently without any control of the bank. Such committee used to engage person on casual basis to run the canteen and also used to regulate the service condition of such person. Payment of any remuneration to such person was the responsibility and concern of the canteen committee and not of the bank. It was the discretion of the committee to engage or disengage such person. Bank is not at all concerned with the engagement or dis-engagement of any canteen boy.

10. The learned representative of the management submitted that the alleged workman Sri Ram Vinay Singh was admittedly a canteen boy engaged by local implementation committee of the branch of the bank. This facts is apparent from Ext.-W which the letter dt-27.02.2002 sent by the Branch Manager to the Zonal Office in which he has mentioned that the workman Sri Ram Vinay Singh was working as a canteen boy in the branch. He further submitted that from perusal of the order of the Hon'ble Patna High Court passed in C.W.J.C No.- 13102 of 2004 filed by this workman Sri Ram Vinay Singh as well as from the order passed in LPA No.- 1530 of 2011 it is apparent that it was submitted on

behalf of the workman Ram Vinay Singh that he was a canteen boy on payment of daily wages and was engaged by the local implementation committee of the employees of the Arwal branch of State Bank of India.

11. In this regard the learned representative of the bank relied upon a decision of a Hon'ble Apex Court delivered on 17.04.2000 in the case of State Bank of India and Ors Versus State Bank of India Canteen Employees Union (Bengal Circle) (2000)5 SCC 531, in which the Hon'ble Apex Court held that “ Employees of the canteens which are run at various branches by the local implementation committee as per the welfare scheme framed by the SBI would not become employees of the bank as the bank is not having any statutory or contractual obligation or obligation arising under the Award to run such canteens.”

12. The learned representative of the management further submitted that there is no any such paper / documents available in the Arwal Branch of the State Bank of India, which may show that the Ram Vinay Singh was ever engage as a messenger in the said branch. This facts has been admitted by the M.W-1 Santosh Kumar in para-8 of his deposition also. It was further submitted that the alleged workman failed to produce any appointment letter or termination letter issued by the management. He also failed to produce the Branch Manager who orally appointed him. Both the letter Ext.- W & W/1 which have been brought on record do not bear the letter number which creates doubt regarding genuineness of the documents brought before this tribunal. No other witness has been produced on behalf of the workman in support of his case. The workman has completely failed to prove his case that he comes under the category of workman of the management.

13. He further submitted that appointment is to be made through recruitment process by following the due processes of law in accordance with the existing service rules of the management. Thus even if it is presumed that he was orally appointed by the then Branch Manager his appointment is ab-initio void and illegal. In this regard the learned representative of the management relied upon the decision of the Hon'ble Apex Court in the case of the Secretary, State of Karnataka Versus Uma Devi & Others { (2006)4 SCC 1 }. The learned representative of the management further relied upon two decision of the Hon'ble Court namely (1) Writ Petition No.- 29378 of 2009 decided on 05.02.2015 Surendra Kumar Lal Versus State of U.P and Ors. (2) Writ Petition No.- 16370 of 1993 decided on 17.02.2004 Zonal Manager, Central Bank of India Versus D. Anjaiah and Ors. In support of his case. The representative of the management submitted that as Ram Vinay Singh was never appointed by the management as such there was no question of his alleged termination by the management.

14. After hearing the learned representative of the parties concerned, and their pleadings, evidence, and documents available on the record I am of the view that the alleged action of the management terminating the service of Sri Ram Vinay Singh cannot to said to be unjustified. He completely failed to prove that he was ever appointed by the management at any point of time. He failed to bring any appointment letter on the record. His consistent case appears to be of a canteen boy which is apparent from the order of the Hon'ble Patna High Court passed in the C.W.J.C and L.P.A as aforesaid as well as the Ext.-W. In my view the alleged workman Ram Vinay Singh is not entitled to any relief in this case. This award is effected after date of publication and gazette.

And accordingly this is my award.

Dictated & Corrected by me.

20.05.2019

VISHWESHWAR NATH MISHRA, Presiding Officer

नई दिल्ली, 11 जून, 2019

का.आ. 1036.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण हैदराबाद के पंचाट (संदर्भ संख्या 93/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 11.06.2019 को प्राप्त हुए थे।

[सं. एल-12025/01/2019-आईआर (बी-1)]

बी. एस. बिश्ट, अवर सचिव

New Delhi, the 11th June, 2019

S.O. 1036.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 93/2005) of the Central Government Industrial Tribunal-cum-Labour Court Hyderabad, as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 11.06.2019.

[No. L-12025/01/2019-IR (B-1)]

B. S. BISHT, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD****Present :** Sri Muralidhar Pradhan, Presiding OfficerDated the 3rd day of May, 2019**INDUSTRIAL DISPUTE L.C. No. 93/2005****Between:**

Sri R. Venkateswara Rao,
S/o RadhaKrishna Murthy,
R/o Flat No.226, E-Block,
Jamuna Arcade, Jambagh,
Hyderabad – 500 095.

...Petitioner

AND

The Assistant General Manager (Region-II),
State Bank of India,
Hyderabad Zonal Office,
Patny centre,
Secunerabad 500 003.

...Respondent

Appearances:

For the Petitioner : M/s. G. Vidya Sagar, K. Udaya Sree, P. Sudheer Rao & B. Shiva Kumar, Advocates

For the Respondent : M/s. B.G. Ravindra Reddy & B.V. Chandra Sekhar, Advocates

AWARD

The Petitioner, Sri R. Venkateswara Rao, who was an employee of the Respondent Bank has filed this Petition invoking Sec.2 A (2) of the I.D. Act, 1947, seeking for declaring the dismissal order dated 13.4.2004 issued by the Respondent as illegal and to set aside the same and to grant consequential relief of reinstatement into service to the Petitioner duly granting of other consequential benefits such as, continuity of service, back wages, other attendant benefits. The Respondent has contested the claim of the Petitioner by filing counter. Both the parties have engaged their advocates at the consent of either party.

2. As can be seen from the contentions of the Petitioner the claim of the Petitioner in brief which runs as follows:

The Petitioner has joined as a clerk cum cashier in the State Bank of India, the Respondent's bank in the year 1984 and got confirmed in the said post. While he was working at Hyderabad University campus branch, by proceedings dated 12.12.2000 he was placed under suspension pending detailed enquiry alleging that certain serious irregularities were

committed by him while working in Chandulal Baradari branch. The Petitioner was issued with Memorandum of Charges dated 20.11.2001 alleging 11 Charges. Thereafter one domestic enquiry was ordered to be conducted by nominating Sri T.L. Hari Haran as the Enquiry Officer and enquiry was held on 11.2.2002. After completion of enquiry the Enquiry Officer submitted his report on 23.12.2003 holding Charges Nos.1,2,4,6,8,9,10 and 11 are proved, Charge No.3 as partly proved and Charges No. 5 and 7 are not proved. Basing on the findings of the Enquiry Officer, the Petitioner workman was issued with the proceedings dated 11.2.2004 proposing to impose a punishment of dismissal from service without notice for which the Petitioner workman submitted his representation on 12.3.2004. But, vide proceedings dated 13.4.2004, the Petitioner workman was imposed with punishment of dismissal from service. It is also stated that the Petitioner/workman was falsely implicated in the Charges leading to dismissal from service. Being aggrieved by the above order of dismissal from service the Petitioner workman preferred an appeal before the Dy. General Manager of the Respondent's bank by filing one representation dated 29.3.2004 which has not been disposed of till date. Thereafter the Petitioner was constrained to invoke the provision of Sec. 2A(2) of the Industrial Disputes Act, 1947 by filing the present industrial dispute. The Petitioner further submitted that the Enquiry Officer has not properly conducted the enquiry. The Respondent bank has framed the Charges without any application of mind, and only basing on assumptions and presumptions the enquiry report has been submitted. The Charges framed against the Petitioner is false and untrue. The Enquiry Officer has conducted the enquiry without application of mind. It is submitted that the punishment of dismissal from service of the Petitioner is disproportionate and unjust. It is further submitted that since the date of dismissal from service, the Petitioner could not secure any alternative employment and leading a miserable life. Lastly the Petitioner submitted to set aside the order of dismissal and prayed to direct the Respondents to reinstate the Petitioner into service with continuity of service, back wages and other attendant benefits.

3. **The Respondent bank filed its counter /reply with the averments in brief which runs as follows:**

The industrial dispute filed by the Petitioner is neither maintainable in law nor on the facts of the case. The allegations made in the claim statement are not correct. The Petitioner is put to strict proof of all the allegations made by him in his industrial dispute. The Respondent submitted that the Petitioner was appointed as a Clerk cum Cashier in the year 1984. In the year 1985, while he was working as a computer operator in Hyderabad University campus branch of the SBI, he had committed certain serious misconducts for which he was issued with Charge sheet dated 20.11.2001, consisting of 11 Charges. The Petitioner had not submitted any explanation to the Charge sheet. Thereafter it was decided to conduct an enquiry and accordingly Sri T.L. Hariharan, Chief Manager (GB), Region-III, SBI, Zonal Office, Hyderabad was appointed as the Enquiry Officer under order dated 23.6.2002. The said officer conducted the enquiry which was commenced on 11.2.2002 and completed on 30.8.2003. The Petitioner was given fair and reasonable opportunity to participate in the enquiry. On behalf of the management exhibits Ex.P1 to Ex.P50 and Ex.P51/1 to Ex.P51/75 were marked. The Petitioner relied on some documents which were also marked as Ex.D1 to Ex.D14. The Petitioner was defended in the enquiry by appointing Sri B. Nanda Kishore, Dy. General Secretary, SBI Staff Union, Hyderabad. After completion of the enquiry, the Enquiry Officer submitted his report on 23.12.2003 holding Charge Nos. 1,2,4,6,8,9,10 & 11 as proved. Charge No.3 Partly proved and Charge Nos. 5 and 7 are as not proved. It is also stated that the Asst. General Manager (Region-II) who was the Disciplinary Authority had examined the entire record and agreed with the findings of the Enquiry Officer and proposed the punishment of dismissal from service without any notice. The Petitioner was given an opportunity to submit his explanation and to attend the personal hearing under Memo dated 11.2.2004. The Petitioner was also furnished with a copy of the enquiry report. The Disciplinary Authority after hearing the Petitioner and after examining the entire record once again, passed the order on 13.3.2004 imposing the punishment of "dismissal from service without notice". It is also submitted that the misconduct proved against the Petitioner is very grave and serious in nature and the Petitioner does not deserve to be in service of a financial institution and accordingly the punishment of dismissal is legal and justified. The Petitioner was given full opportunity during the enquiry to defend himself and the enquiry was conducted in conformity with the principles of natural justice. The enquiry is held legal and valid. It is further submitted that the punishment imposed on the Petitioner is proper, legal and justified. The allegation of the Petitioner that the Charges were not established and there is no evidence on record to establish the Charges etc., are all incorrect. The Charges were found to be proved by the Enquiry Officer and the findings of the Enquiry Officer are based on the evidence on record. The Disciplinary Authority has thoroughly examined the evidence on record and agreed with the findings of the Enquiry Officer. There is absolutely no ground and no merit in the industrial dispute, and the same is liable to be dismissed.

4. **The Petitioner filed rejoinder in brief with the following averments:**

It is submitted that Sec.13-B of the Industrial Employment Standing Orders Act, 1946, mandates that, rules or regulations of any employee prescribing service conditions of employees shall be gazetted by the appropriate Govt. in the official Gazette. The Act mandates that, for affecting termination of an employee, one month notice is a condition precedent, which was not admittedly given in this case to the Petitioner. The Petitioner further reiterated his submissions regarding the 11 Charges levelled against him.

5. I have already heard the Learned Counsel of both the sides on the matter. Written notes of arguments were also filed by the parties on this aspect which have been taken into consideration.

6. **The points for consideration are:**

- I. Whether the action of the management of State Bank of India in dismissing Petitioner Sri R. Venkateswara Rao, clerk cum cashier from services w.e.f.13.4.2004 is legal and justified ?
- II. If not, to what relief the Petitioner is entitled for?

7. The Petitioner challenged the validity of the domestic enquiry conducted in this case and after hearing both the sides the domestic enquiry conducted by the Respondent Bank was held as illegal and not valid by this Tribunal vide order dated 12.4.2016. In view of the same, the Respondent Bank has examined Sri K.V.V. Satyanaryana as MW1 and marked four documents on its behalf as Ex.M1 to M4. Similarly, the Petitioner was examined himself as WW1 and marked 12 documents in support of his claim, which are marked as Ex.W1 to W12.

8. The Learned Counsel for the Petitioner workman contended that the Petitioner joined in the Respondent bank in the year 1984 and got confirmed in the said post. While he was working at Hyderabad University campus branch, by proceedings dated 1.21.2000 he was placed under suspension pending detailed enquiry alleging that certain serious irregularities were committed by him while working in Chandulal Baradari Branch. The Petitioner was issued with Memorandum of charges dated 20.11.2001 alleging 11 charges where one domestic enquiry was ordered to be conducted by nominating Sri T.L. Hari Haran as the Enquiry Officer and the enquiry was held on 11.2.2002 and after completion of enquiry, the Enquiry Officer submitted his report on 23.12.2003 holding that charge Nos.1,2,4,6,8,9,10 and 11 are held proved, charge No.3 is partly proved and the charge Nos. 5 and 7 are not proved. Basing on the findings of the Enquiry Officer the Petitioner workman was issued with the proceedings dated 11.2.2004 proposing to a punishment of "dismissal from service without notice" for which the Petitioner submitted his representation on 12.3.2004. But without considering his representation vide proceedings dated 13.3.2004 the Petitioner workman was imposed with a punishment of dismissal from service. She contended that the Petitioner workman was falsely implicated in the charges leading to dismissal from service. The Petitioner workman also preferred an appeal before the Deputy General Manager by filing representation dated 29.5.2004 which has not been disposed of, for which the Petitioner was constrained to take shelter in the court. The domestic enquiry conducted by the Respondent bank was held illegal and not valid by this Tribunal vide order dated 12.4.2016. The Respondent bank was given opportunity to examine witnesses and the Respondent has also examined one witness as MW1 and proved 4 documents as Ex.M1 to M4. The Petitioner has objected Exs.M3 and M4 during the course of hearing of the case and both are marked with objection. She contended that Ex.M3 and M4 cannot be taken into consideration in view of the judgement of the Apex Court reported in 1999(1)SCC page 517 decided in the case of Neeta Kaplish and the Presiding Officer, Labour Court and another. She also contended that out of the 11 charges framed against the Petitioner charge Nos. 5 and 7 are false, not proved, while charge No.3 is held as partly proved. Actually charge Nos.1,2 and 10 can not be framed against the Petitioner because of the charges are not at all coming under the rule of misconduct. According to the terms of para 5 to 1 (4)(j) of the Sastri Award read with paragraph 18.28 of the Desai Award. Charge Nos. 1 to 2 pertains to holding of SB Account in joint with the Petitioner's wife. The above referred paras do not prohibit the employee to hold and operate a SB Account in joint with his wife. No other rule is expedite either in the charge sheet. She submitted that the Respondent bank has not shown any rule for holding the joint pass book by an employee with his wife is coming under the rule of misconduct. She also pointed out the evidence of MW1 who in his cross examination has admitted that no notice was issued to the Petitioner relating to charge no.1 and 2 and further admitted that joint account is opened in public category. Therefore, the Petitioner had no benefits of the staff category account. There is no allegation of misappropriation of accounts against the Petitioner and the charges are made with biased view. She further contended that on the other hand the Petitioner workman has marked 12 documents in support of his claim. The respondent bank has not filed any document to prove the allegation made against the Petitioner. The respondent was also given ample opportunity to substantiate the charges. But the respondent failed to prove those charges during the course of argument. Rather, during the course of examination MW1 has admitted that there is no loss to the bank, charge No.3 itself is speaking about payment of adjustment of Rs.48,500/- on 29.6.2000. The Petitioner workman deposited Rs.553/- in the clients' account towards interest. Even though there is allegation that the Petitioner had failed to met the liability of cheques negotiated under NLC at his instance, and subsequently returned unpaid, immediately on the date of receipt of the instrument at the branch and had gained pecuniary benefits for himself, the same was not proved. MW1 in his cross examination has admitted that the Branch Manager had given permission to the Petitioner regarding the allegation made in charge No.3. MW1 further admitted that there was no loss to the bank, only the Petitioner himself used his savings account. As there was no sufficient evidence available against the Petitioner as regards charge No.3, the enquiry officer of the respondent bank come to the conclusion that the charge No.3 is partly proved. He also contended that as regards charge No.4, without production of the alleged cheque, this charge was held proved by the enquiry officer. During the course of trial no document is filed by the respondent bank in support of charge No.4. In this regard she relied on a decision of the Apex Court reported in AIR 1986 SC page No.2118(1) decided in the case of Kasinath Deekshita Vs. Union of India and others wherein their Lordships held that "non-supply of copies of statement and documents relied on by the Disciplinary Authority amounts to prejudice to employee". The Hon'ble Court further held that the employee has been denied a reasonable opportunity for exonerating himself from the charges. she also contended that the observation of the Hon'ble Apex Court is squarely applicable to charges No.1,2,3,4,6,8,9, and 11 wherein the respondent bank has failed to produce the documents relied on by him before this court during the course of trial. Relying on the evidence of MW1 she contended that MW1 in his cross examination has admitted that the respondent bank has taken an

amount of Rs.30000/- from the joint account of the Petitioner on 12.12.2001 vide Ex.W1. She further admitted that the alleged cheque in respect of charge No.4 does not belong to the Petitioner and purportedly not produced before the court to substantiate charge No.4 framed by the bank. Thus, Burden lies on the respondent bank how to prove charge No.4, and it was proved. The learned counsel for the Petitioner further contended that charge Nos.5 and 7 are also not proved. Relying on the evidence of MW1 she contended that MW1 in his evidence has clearly admitted that charge Nos 5 and 7 are not proved. The respondent bank went on framing charges on assumptions and presumptions against the Petitioner, which clearly evident from the charges framed against him and without proof of any of the charges, the Petitioner has been dismissed from service. In this case the Presenting Officer was examined as MW1 who was not working by the time of the alleged incident. He was having no knowledge of the things happened during the period of the allegation made in the charge sheet. The respondent bank purportedly did not examine the officers who worked during the period of the allegation made in the charge sheet. Due to the reasons that the officers worked during the period of allegations and the charges are retained to authorize the transactions which were lodged by the bank as a misconduct on the part of the workman. In fact those officers are responsible for the alleged misconduct. Only with a view to save the skin of the officers they were not produced before the court to stand in the witness box and to make the Petitioner a scape goat. She further contended that charge Nos. 5 and 6 pertains to operation of the accounts standing in the name of Sri K. Ravi. Admittedly the respondent bank held Charge No.5 as not proved. The same would be accepted while dealing with charge No.6 also. In charge No.6 the allegation is that the Petitioner has posted several debits/cheques to the over draft account of Sri K.Ravi without obtaining the approval of the competent authority through the 'cheques referred and returned register'. 'The limit sanctioned by the officers is upto Rs.3,60,000/-. As per allegation the debits made on 16.4.1999 which are within the limit of Rs.3,60,000/- vide Ex.W6. Therefore, this charge cannot be substantiated and proved. If the limit is Rs.1,80,000/- then, the supervisory ID of the concerned officer will be required, if system rejects posting of the alleged cheques even after check ID of the concerned officer (YP N), then supervisory ID of another officer or Branch Manager is required. Simultaneously, after rejection of the cheque by the computer, then only the question of referring the cheques to the cheque referred and returned register will arise and the supervisory officer has to put his ID "SUP ID". As per her contention in Ex.W6 which is a day book of the bank dated 16.4.1999, there is no "SUP ID" on the extreme right column top of Ex.W6. Only, user ID RVR" and "check ID YPN" are here. At the bottom of Ex.W6 there is a note which is extracted and may be referred, "Transactions bearing supervisor ID's in the last column signify that they met with exception condition such as limit excess, dormancy etc. and were cleared by supervisors." There was no supervisory ID "SUP ID" in the right side top column of Ex.W6. therefore, charge No.6 cannot be proved. If the limit is only Rs.180000/- as alleged by the bank, supervisory ID is compulsory. Therefore, the limit sanctioned by the officers is Rs.360000/- as mentioned in Ex.W6 and not Rs.180000/-. The limit is sanctioned by the Branch Manager which has been reflected in the OD sanction letter which has not been produced by the respondent bank. Basing on the OD sanction letter the officers will set the limit in the computer system. The duty of the computer operator is only to enter the cheque and after such entry it has to be authorized by the officer. Therefore, it was authorized by YPN with his check ID. The respondent bank failed to produce the OD sanction letter to prove its stand. Further more, the transaction referred in cheque No.6 does not result in any pecuniary loss to the bank. Therefore, there is no allegation that the Petitioner was benefited by posting of the said cheques. Further more, Ex.W6 dated 16.6.1999 which is the day book maintained by the respondent bank can speak about the limit of the cheque. Unless the office checks the transaction, and puts his ID the posting of cheques is not completed. With the check ID of the officer only the computer system can accept the transaction. The workman need not refer to the "cheques referred and returned register" as alleged by the respondent bank. Because the limit is within the sanctioned limit of Rs.360000/-, which is not done in this case. If there is any irregularity or mistake is crepted, as alleged by the bank in charge No.6, the allegations has to be made against the officer Sri Y.P.N. who authorized the transaction with his "check ID YPN". But the bank has not made any allegation against the officer who authorized the transaction. Only with a vindictive attitude the workman has been charged. Therefore, the allegation in charge No.6 is also not proved.

9. She also contended that charge No.8 refers to debit to STDR interest account on 31.3.2000 for Rs.258600/- and credited the proceeds to the closed STDR account pertains to Sri K. Ravi and subsequently the said account was virtually withdrawn on 7.4.2000. No evidence is available with regard to the person who has withdrawn the amount on 7.4.2000 during the enquiry also. Without identifying the person who has withdrawn the amount on 7.4.2000, framing of the charge against the Petitioner is unjustified. It is the specific stand of the Petitioner that he proceeded on leave from 27.3.2000 to 31.3.2000. Therefore, the allegation made against the Petitioner in respect of charge No.8 is baseless. She also contended that charge No.11 is also related to charge No.8. In charge No.11, allegation is that the Petitioner used the password of Sri A.K. Prabhakar Rao, field officer, for check I.D., while debiting STDR interest account on 31.3.2000. But in this case Sri A.K. Prabhakar Rao was not examined during the course of the enquiry nor there was any evidence on record to establish that the password of Sri A.K. Prabhakar Rao was used by the Petitioner. Without any evidence either oral or documentary, this charge No.11 has been proved. The enquiry officer in his enquiry report has also observed that there is no proof to say that the Petitioner used the ID of Sri A.K. Prabhakar Rao. But inspite of that charge No.11 has been proved. The respondent bank has not produced any STDR vouchers either credit or debit or any other document before this court, during the course of hearing or in the enquiry also. Rather, the Petitioner has filed Ex.W5, the leave register, attendance register which shows that the Petitioner was on leave from 27.3.2000 to 31.3.2000. In banking system every day the accounts should be settled by tallying them. The new accounts year starts on 1.4.2000 or on the 1st April every year. So, doing work of 31.3.2000 on subsequent dates does not arise. The Petitioner workman

could not be held responsible for the allegation made against him. No notice is given by the Respondent bank to the Petitioner before submission of the charge sheet. On the other hand, MW1 in his evidence has deposed that only the Branch Manager is the competent authority to open the closed accounts. He only got means to open or close the account. But the Petitioner being an Award staff or computer operator can not open the closed accounts, and he has been unnecessarily entangled in the alleged charge. She further contended that the power of debiting money from the STDR account of the bank lies with the Branch Manager only and in any means it will not be provided to the clerk or award staff. Thus, serious allegations are made with an impression that only the Petitioner is having the whole and sole money/cheque powers in the bank treating the bank as a proprietor based business shop of the Petitioner. The authorization of two officers is required, for the alleged transactions. Further more, Sri A.K. Prabhakar Rao has not given any complaint against the Petitioner to the Respondent bank. The Petitioner was on leave on the alleged date i.e., on 31.3.2000, which is not considered by the Respondent and held charges Nos. 6,7,8 and 11 have been proved. In this case Sri A. K. Prabhakar Rao who is a material witness has not been examined by the Respondent bank either during the course of domestic enquiry or before the court during the course of trial to substantiate charge No.11 wherein the Petitioner was deprived of getting reasonable opportunity to cross-examine him to prove his defence. In support of her contention she relied on a decision reported in 2011(3) ALD 536 wherein their Lordships held that, crucial witness in that case, the Head Master was not examined. The court held that non-examination of the head master denying the fair opportunity to establish the defence of the workmen. As per her contention, when the material witness has not been examined and fair opportunity has not been given to the Petitioner to prove his defence the alleged charge is also not proved. She further contended that similarly charge No.9 has been framed against the Petitioner, on the allegation that he raised a manually to the TDR account of A.P. State Wakf Board on 5.8.2000 for Rs.39,272/- and credited the same to SB Account of Sri P. Raghuram. The alleged debit voucher or any other documentary proof is produced neither before the Enquiry Officer nor before this court. The voucher which was marked as Ex.W2 would clearly show that it was passed by the then branch account, who is an officer. hence, the same is also not attributed to him. The Disciplinary Authority observed that while the credit is made by way of transfer, the Petitioner gave the narration by way of clearing, is misconceived, in as much as the narration to the transaction will come automatically in the computer. Once transaction type is selected, type of narration cannot be altered (system will not permit). During the posting of the clearing transactions, the computer operator is left with no choice to alter the transaction type. The entire transaction type from beginning to the end will take automatically for clearing transactions. The entry dated 5.8.2000 for an amount of Rs.39,272/- is by way of clearing and it is cleared from the account statement of Ex.W7 and the then branch accountant has been authorized the same with ID "YPN" in the right side column. She further contended that Ex.W2 is the voucher which was passed by the officer. Exs.W2, W7 and W11 are sufficient to prove the innocence of the Petitioner. Ex.W2 is the voucher passed by the officer of the Bank Sri Y.P. Nagendar, Ex.W7 is the account statement of Sri P. Raghuram and Ex.W11 is day book of the bank dated 5.8.2000. The narration given in the account statement of dated 5.8.2000 for an amount of rs.39,272/- is "by clearing". The basis for that is Ex.W2 which is passed by an officer as already stated above. The day book Ex.W11 is clearly showing that the officer permitted the transaction with his check 'ID' 'YPN'. The user ID 'RVR' belongs to the Petitioner. The entry made by the Petitioner is permitted by officer ID 'YPN' in the computer. Not only the debit and credit vouchers or other document is filed by the Respondent Bank before this Hon'ble Court. These exhibits W2, W7 and W11 are not disproved by the Respondent bank. Therefore, charge No.9 can not be proved. She also contended that Charge No.10 pertains to offering the shares as security to the loan sanctioned to A. Kiranmaye Sharma. Offering a security to a person, cannot be termed as a misconduct. Further more, while granting the loan Petitioner has given a letter to the Manager before sanction of the loan that he has no objection in sanctioning the loan, as such the charge cannot be termed as a misconduct. The said A. Kiranmaya Sarma repaid the entire loan amount with interest, and when the Respondent did not return the share certificates, he approached the Hon'ble High Court of A.P., by way of filing CRP No:3422 of 2004 and the Hon'ble High Court of A.P., allowed the same on 21.4.2006. She further contended that even though the Petitioner made a prayer before the court, to direct the Respondent bank to produce the documents which have been used against the Petitioner during the course of enquiry the Respondent bank failed to produce the same. The Petitioner could not be able to defend the allegation of the Respondent bank properly, whatever documents available before the court, those are not sufficient to prove the charges levelled against the Petitioner. Therefore, the order of dismissal passed against the Petitioner be set aside and the order may be passed to reinstate the Petitioner into service and the Petitioner be allowed to get all the benefits as prayed for.

10. On the other hand, the Learned Counsel appearing for the Respondent contended that, admittedly 11 charges have been framed against the Petitioner out of which charge Nos.1,2,4,6,8,9,10 and 11 are proved. Charge No.3 is partly proved. Charge Nos.5 and 7 are not proved. Since the important charges have been proved, the Enquiry Officer suggested for dismissal of the Petitioner from service without notice. The Asst. General Manager(Region II) being the Disciplinary Authority examined the entire report and agreed with the findings of the Enquiry Officer and proposed the punishment of dismissal from service. The Petitioner was given an opportunity to submit his explanation and to attend personal hearing under memo dated 11.2.2004. The Petitioner was also furnished with a copy of the enquiry report. The Disciplinary Authority after hearing the Petitioner and after examining the entire record once again passed the order on 13.3.2004 imposing the punishment of "dismissal from service without notice". It is submitted that the Petitioner had joined his SB Account bearing no.011920012900 with his wife and he used to look into the business transaction. The very purpose of opening a joint account along with his wife is to misuse his position in the bank,

thereby to enrich himself illegally. Otherwise there is no reason of all justification to open the joint account. Though it was a joint account it was operated often by the Petitioner and resorted to illegal credits to the account. It is his account and under the guise of joint account he operated his account and the transactions belong to him only. The Petitioner did not took permission from the bank to open the joint account. He also submitted that the Petitioner had taken an amount of Rs.40,500/- from the bank in respect of a cheque dated 3.6.2000 and it was dishonoured by the Petitioner and proved. The Petitioner himself admitted that when he came to know about return of the cheque unpaid, he has reimbursed the amount with interest of Rs.553/- on 29.6.2000. Hence, charge No.3 is proved. Mere paying the amount with interest does not absolve him of the allegation of misconduct. He also submitted that with regard to charge No.4, the Petitioner purchased a cheque bearing No.097548 for Rs.30000/- and the proceeds were credited to his current account bearing No.01090094035. The cheque pertains to the current account of the Petitioner and he could not be able to explain it. The Petitioner could not be able to satisfy the respondent bank with the cheque which belongs to him and he purchased it on behalf of the bank and credits the amount to his current account and failed to pay it back. Therefore, charge No.4 is fully proved. The Petitioner had defrauded the bank. He had availed in the name K. Ravi, overdraft for Rs.180000/- on 16.3.1993 against a security of STDR No.697174 (account No.01292011198683) dated 24.12.1998 for RS.2,31745/- due on 23.12.1999 standing in the name of K.Ravi. In order to cancel the above fraudulent act, on 7.2.2000 he had closed the said overdraft account by prematurely closing the STDR without producing any relevant receipt, without the knowledge of the account holder. The Petitioner had posted the above said overdraft account of K. Ravi, several debits/cheques resulting in excess drawings without obtaining approval of the competent authority through “cheques referred and returned register”. All the cheques posted by him are dated 16.4.1999, bearing No. 00100356 to Rs.77000/-, bearing cheque No.00100354, and bearing No.00100355 to Rs.55000/-. The Petitioner had availed a demand loan for Rs.180000/- on 2.3.1999 in the name of K. Venkat against a security of STDR bearing No.697174 under account No.01292011983 dated 24.12.1998 for Rs.231745/- dated 23.12.1999 standing in the name of K. Venkat and to cancel his fraudulent act, he closed the said demand loan by prematurely closing the said STDR without production of the relevant receipt and without the knowledge of the account holder. The Petitioner has fraudulently raised a debit STDR interest account on 31.3.2000 for Rs.258600/- and credited the proceeds thereof to the closed STDR account No.0129201198300 of K. Ravi under user ID “RVR” exposing the bank to grave risk and the amount was so credited fraudulently withdrawn on 7.4.2000 by the Petitioner. It is stated that the Petitioner had fraudulently debited manually to the TDR account of AP State Wakf Board on 5.8.2000 for Rs.39272/- and credited the same to the SB Account of Sri P. Raghuram under his USIR ID. The account of Sri P. Raghuram was introduced by the Petitioner who had furnished his share as security for the loan raised by Sri P. Kiranmayi Sarma and he did not obtain permission for the competent authority for doing so. The Petitioner used the pass word Sri A.K. Prabhakar Rao, the field officer for CHECH ID while debiting the STDR interest account with Rs.258616/- on 31.3.2000 in connection with the STDR account of Sri K. Ravi. The Petitioner had not submitted any explanation to the charge sheet submitted by the respondent bank. Therefore, it was decided to conduct an enquiry and accordingly Sri T.L. Hariharan, Chief Manager (GB), Region –III, SBI Zonal Office, Hyderabad was appointed as the enquiry officer. He conducted the enquiry after giving fair and reasonable opportunity to the Petitioner. Lastly the Petitioner was defended in the enquiry by engaging Sri P. Nanda Kishore, Deputy General Secretary, SBI Staff Union, Hyderabad and after completion of the enquiry, the enquiry officer submitted his report holding all the charges as proved except charge No.5 and 7. The Assistant General Manager (Region-II) who was the Disciplinary Authority had examined the enquiry report and so agreed with the findings of the enquiry officer and proposed the punishment of dismissal from service without any notice. The Petitioner was given an opportunity to submit his explanation and to attend personal hearing. The Petitioner was also given the copy of enquiry report. The Disciplinary Authority after hearing the Petitioner and after examining the entire record once again passed the order dated 13.3.2004 imposing the punishment of “Dismissal from service without notice”. The misconduct proved against the Petitioner is grave and serious and the Petitioner does not deserve to be in service of a financial institution and accordingly the punishment of dismissal from service is legal and justified. The Petitioner who has committed serious and grave misconduct is not entitled to get any relief. The respondent bank has lost confidence on the Petitioner. Therefore, the dispute raised by the Petitioner is liable to be dismissed and as such the Petitioner is not entitled to get any relief as prayed for.

11. **Point No.I:** On consideration of the rival contentions of both the sides, it is seen that the Petitioner was working as a clerk under the Respondent bank. While he was working at Hyderabad University campus branch he was placed under suspension on 12.12.2000 on the allegation that the Petitioner has committed certain serious irregularities while working at Chandulal Baradari Branch. The Petitioner was issued with the Memorandum of Charges dated 20.11.2001 alleging 11 charges. Thereafter one domestic enquiry was conducted. The Petitioner was given ample opportunity to defend his case in the enquiry. After conclusion of the domestic enquiry the Enquiry Officer submitted his report in which charge Nos.1,2,4,6,8,9,10 and 11 were proved. Charge No.3 was partially proved and charge Nos.5 and 7 were not proved. Basing on the findings of the Enquiry Officer the Petitioner workman was issued with the enquiry proceeding dated 11.2.2004, proposing to impose a punishment of dismissal from service without notice. Upon which the workman submitted one representation on 12.3.2004. But, on 13.4.2004 the Petitioner workman was imposed with the punishment of dismissal from service and the representation of the Petitioner workman was not considered properly. The counsel of the Petitioner workman has argued that without proof of any cogent evidence the Enquiry Officer being biased prepared the enquiry report. Only on assumptions and presumptions he has prepared the

report and submitted it to the Disciplinary Authority stating that charge Nos.1,2,4,6,8,9,10 and 11 were proved. Charge No.3 was partially proved and charge Nos.5 and 7 were not proved and lastly suggested for the quantum of punishment.

12. On the other hand the Learned Counsel for the Respondent has argued that the Petitioner workman was involved in serious misconducts for which after conclusion of the domestic enquiry the Disciplinary Authority being satisfied on the report of the Enquiry Officer has passed the order of dismissal from service. Even though the bank has not sustained any financial loss, but the reputation of the bank has already been lost due to the misconduct of the workman. In fact, the Petitioner workman has challenged the validity of the domestic enquiry. But after hearing from both the sides it has already been held that the domestic enquiry conducted by the Respondent management is not legal and valid. The Petitioner workman had moved this court to direct the Respondent management for production of the original documents which they have relied on during the course of the domestic enquiry to prove the alleged charges. But the Respondent bank inspite of taking several opportunities failed to provide the original documents relied on by them during the course of the domestic enquiry to the Petitioner/workman. The counsel for the Respondent during the course of argument has only reiterated his argument basing on the report submitted by the Enquiry Officer. The Respondent bank has also given ample opportunity to adduce evidence in support of the charges which has been proved during the course of the domestic enquiry. Rather the witness examined on behalf of the Respondent bank (MW1) has admitted some of the plea of the Petitioner workman. The Respondent has also failed to prove the documents before the court which have been relied on by the Respondent bank during the course of the domestic enquiry. When the Respondent Bank failed to produce the documents relied on by the bank during the course of the domestic enquiry, it clearly indicates that reasonable opportunity has not been given to the Petitioner workman for exonerating himself from the charges. In a decision reported in AIR1986 SC page No.2118 (1), Kasinath Deekshitha Vs. Union of India, Hon'ble Supreme Court held that non supply of copies of the statement and documents and relied on by the workman amounts to prejudice occasioned to employee. The Hon'ble Supreme Court further held that the employee has been denied reasonable opportunity for exonerating himself from charges. When the documents sought for by the Petitioner have not been produced by the Respondent bank before the court it clearly shows that the Respondent Bank without giving reasonable opportunity to the Petitioner workman has passed the order of dismissal of service of the Petitioner. Further more, whatever, misconduct has been committed by the workman Petitioner, who was working as a mere clerk/computer operator, he had no authority to commit such misconduct independently without the knowledge of his supervisor. Because the Petitioner was working under the control of some supervisory authorities as per banking system. But, none of the supervisory authorities have come forward to make any allegation against the Petitioner workman, while the proceeding was going on. Even none of them have come forward to adduce evidence against the Petitioner workman, either during the course of the enquiry or during the course of the trial before this court, which clearly indicates that in order to escape themselves from the liability, the supervising officers have not come to the picture, and the Petitioner workman was only entangled in the alleged charges. Even though all the charges have been interlinked to each other, but without proving any documents, basing on assumptions and presumptions, charge Nos.1,2,4,6,8,9,10 and 11 are proved and even though no document has been produced while proving charge No.3, it has been held that charge No.3 is partially proved. charge Nos.5 and 7 are also not proved due to want of sufficient evidence. This shows that the Respondent bank has not properly submitted the charge sheet and casually submitted it for an eye wash. Out of presumptions and assumptions such a charge sheet has been submitted against the Petitioner workman and the Petitioner workman has been given the capital punishment of dismissal from service. Even though appeal has been preferred the result of the appeal was not communicated to the Petitioner workman before passing the final order for dismissal of service of the Petitioner. The right of the Petitioner has not been safeguarded properly which clearly indicates that without complying the proper procedure, order has been passed against the Petitioner without application of mind. Therefore, the action of the Respondent management of the State Bank of India, in dismissing the Petitioner workman Sri R.Venkateswara Rao, clerk cum cashier from service w.e.f. 13.4.2004 is not legal and justified, which needs the interference of this Tribunal to set aside the above order.

Thus, Point No.I is answered accordingly.

13. **Point No.II:** In this point, it is to be decided what relief the Petitioner workman is entitled for. In view of the findings given in Point No.I, the dismissal order passed against the workman Petitioner vide proceedings dated 13.4.2004 is not legal and valid and as such, the same is liable to be set aside. Hence, the Petitioner workman is entitled to be reinstated into service if not superannuated. In fact, the Petitioner has not rendered any service to the respondent bank due his dismissal from service, during the period from the date of dismissal of service till date. Thus, the Petitioner is only entitled to get 50% of back wages with continuity of service and not entitled to get any other relief.

Thus, Point No.II is answered accordingly.

ORDER

The action of the management of State Bank of India, in dismissing the Petitioner Sri R. Venkateswara Rao, Clerk cum Cashier vide proceedings dated 13.4.2004 is not legal and justified and is hereby set aside. The Petitioner is entitled to get reinstatement into service if not superannuated, if superannuated, the Petitioner is only entitled to get 50%

of back wages with continuity of service and other service benefits as applicable to the employees of the Respondent bank.

Award is passed accordingly.

Dictated to Smt P. Phani Gowri, Personal Assistant transcribed by her and corrected by me on this the 3rd day of May, 2019.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the
Petitioner

WW1: Sri R. Venkateswara Rao

Witnesses examined for the
Respondent

MW1: Sri K.V.V. Satyanarayana

Documents marked for the Petitioner

- Ex.W1: Statement of joint account of WW1 containing 4 pages
- Ex.W2: Attested copy of voucher dt.4.8.2000
- Ex.W3: Photostat copy of CRP No.3422/2004
- Ex.W4: Photostat copy of leave register of Respondent bank from 27.3.2000 to 31.3.2000
- Ex.W5: Photostat copy of attendance register of Respondent bank from 27.3.2000 to 31.3.2000
- Ex.W6: Photostat copy of day book of Respondent bank dt.16.4.1999
- Ex.W7: Photostat copy of SB A/c statement of Sri P. Raghuram dt.5.8.2000
- Ex.W8: Postal receipt of Sec'bad HPO RLAD C 7083 to DGM,SBI,Sec'bad
- Ex.W9: Photostat copy of IA NO.182/2013 & petition & Order of this court dt.8.1.2014
- Ex.W10: Photostat copy of IA No.174/2013 & list of documents
- Ex.W11: Photostat copy of day book of SBI, Cahndulal Baraari branch dt.5.8.2000
- Ex.W12: Proposed punishment order of the Disciplinary Authority dt.11.2.2004

Documents marked for the Respondent

- Ex.M1: Photostat copy of charge sheet
- Ex.M2: Photostat copy of punishment order
- Ex.M3: Photostat copy of enquiry report
- Ex.M4: Photostat copy of enquiry proceeding

नई दिल्ली, 11 जून, 2019

का.आ. 1037.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार प्रगति ग्रामीण बैंक प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण बेंगलूर के पंचाट (संदर्भ संख्या 36/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 11.06.2019 को प्राप्त हुए थे।

[सं. एल-12012/047/2013-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 11th June, 2019

S.O. 1037.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 36/2013) of the Central Government Industrial Tribunal-cum-Labour Court Bangalore, as shown in the Annexure, in the Industrial Dispute between the management of Pragathi Gramin Bank and their workmen which were received by the Central Government on 11.06.2019.

[No. L-12012/47/2013-IR (B-1)]

B. S. BISHT, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
BANGALORE****DATED** : 4th APRIL 2019**PRESENT** : JUSTICE SMT. RATHNAKALA, Presiding Officer**C R No. 36/2013****I Party**

Sri C Ramachandrappa,
S/o Sri Siddappa,
Chekuwadi Post, Tawargundi,
Harpanagalli Taluk,
DAVANGERE DIST.

II Party

The Chairman,
Pragathi Gramin Bank,
Head Office,
BELLARY DIST- 583 103.

Appearances

I Party : Shri R. Nagendra Naik, Advocate

II Party : Sh. B. C. Prabhakar, Advocate

1. The Government of India, Ministry of Labour vide order No. L-12012/47/2013-IR(B-I) dated 27.06.2013 in exercise of the power conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred as "The Act") (14 of 1947) made this reference for adjudication of the following Industrial Dispute:

SCHEDULE

"Whether the action of Pragathi Gramin Bank in dismissing the service of Sri C. Ramachandrappa applicant workman is proper and justified? If not what relief the workman is entitled to?"

2. The claim set forth by the I Party workman is that he was working in the Respondent Bank as clerk on 25.09.2009. He was kept under suspension, a charge sheet dated 28.01.2010 followed, the allegations in the charge sheet were :

Charge No. 1 : On 27.11.2008 he has debited PSJND A/C No. 10040 for an amount of Rs. 45000/- Also he had avoided entry in the pass book.

Charge No. 2 : On 21.05.2009 he has accepted case of Rs. 80000/- for credit of SJND A/c No. 12. He has issued the counterfoil, made the entry in the pass book and not account in the Bank's Books of account and thereby misappropriated the said amount.

Charge No. 3 : On 17.04.2009 and on 24.09.2009 a customer remitted Rs. 30000/- and Rs. 20000/- respectively for credit of his SB A/c which he has accepted but did not account and misappropriated the amount.

Charge No. 4 : On 09.03.2009 a depositor remitted Rs. 25000/- to his BSB a/c NO. 115. He has accepted the cash, but did not account it in the Banks Book of accounts and thereby he has misappropriated the amount.

Charge No. 5 : A depositor remitted Rs. 8000/- on 10.03.2008 and Rs. 10000/- on 04.08.2008 to his account. He has accepted the cash but did not account in Banks Books of accounts and thereby misappropriated the amount.

Charge No. 6 : On 01.08.2009 he has accepted Rs. 15622/- cash for credit to SHGDIR 18/08. He has issued counter foil and wrote on the loan card as account closed. But, did not account the same in the Banks Books of Accounts.

Charge No. 7 : On 20.06.2008 a sum of Rs. 25000/- was remitted by a customer for credit of her SB A/c No. 1168 which was accepted by him, but did not account the same in Banks books of accounts.

Charge No. 8 : On 24.02.2009 Rs. 4000/- was debited to SB 1872 of a party without instrument. He was the cashier who has posted the debit entry in the ledger and this is not shown in the pass book. Thus he has misappropriated the amount.

3. Since the workman in his reply denied the charges Domestic Enquiry was initiated by appointing Enquiry Officer; the Enquiry Officer submitted his enquiry report holding him guilty of misconduct; the Disciplinary Authority concurred with the finding of the Enquiry Officer and dismissed him from service; his appeal before the Appellate Authority did not survive; the enquiry was held without providing him single opportunity to appoint Defence Representative; the Enquiry Officer was biased; the Presenting Officer was allowed to ask leading questions; the objection of the Defence Representative for the same was over ruled without any reason; the written submission of Defence Representative was not accepted by the Enquiry Officer on the ground of delay; the punishment imposed is disproportionate to the charge alleged; management did not prove the charge by producing sufficient material; enquiry

was held in violation of principles of natural justice. Hence the prayer to set aside the enquiry, the consequential punishment order and reinstate him into service of the Bank.

4. The II Party countered the claim statement allegations thus: - For the acts of misconduct he was issued charge sheet dated 28.01.2001 and was called upon to submit his explanation. But he did not submit explanation, he participated throughout the enquiry which was held in 12 sittings. During the enquiry, Charge Sheet was read over and explained to him; procedure of enquiry was explained; he was permitted to take the assistance of Defence Representative and he took the assistance of H. Nagabhushana Rao, Clerk-cum-Cashier list of witnesses and documents were furnished to him; copies of documents were also furnished; he has cross-examined the management witnesses; after the evidence of the management, enquiry was posted for his evidence; accordingly, he gave his evidence and closed his side. The Bank marked 38 documents as exhibits and he marked 3 documents. Opportunity was given to address arguments and to file written arguments. The Management Representative submitted its written arguments, same was forwarded to Defence Representative on 17.01.2011 to submit written arguments within 15 days, from the date of receipt of the same. But he did not submit his written arguments, he had all opportunity to conduct his defence. The finding of the Enquiry Officer is based on the material placed during the enquiry, copy of the Enquiry Report was forwarded by the Disciplinary Authority to him calling for his submission to the report, he submitted his submission with a letter dated 06.05.2011 by enclosing the defence brief dated 27.03.2011 which was received on 12.05.2011. But his submission was found not satisfactory. The proposal to dismissal had been communicated to him and an opportunity of personal hearing was given to him by fixing the date of personal hearing. He attended the personal hearing. Considering the seriousness of the proved charges and concurring with the views of the Enquiry Officer, Disciplinary Authority imposed the punishment order of Dismissal. The Appellate Authority upheld the decision of the Disciplinary Authority, he has involved in committing misappropriation of the funds of the Bank / customers and defrauded the bank. The misconduct proved is serious and grave. The punishment order is justified and is legal.

5. On the rival pleadings my learned predecessor framed Preliminary Issue regarding fairness of Domestic Enquiry, the management produced the enquiry records through its witness / Enquiry Officer. In his affidavit evidence, he has stated that the 1st Party was given all reasonable opportunity in conducting the defence. The cross-examination to the witness was unable to extract away thing contrary to his affidavit averments and the documents marked as Ex M-1 to Ex M-22. The 1st Party did not adduce rebuttal evidence, but thereafter remained continuously absent.

6. During the hearing before this Tribunal on 25.10.2016 on which date cross-examination of MW 1 was closed, it was submitted that the workman is no more. From then onwards till now no steps is taken to bring his legal heirs on record. I am convinced that enquiry was held by affording all reasonable opportunity to the workman to defend himself. During the Domestic Enquiry management has examined 10 witnesses, 38 documents were marked. Among them 9 were investigation reports. A complaint was lodged Police Station, Hoovinahadagli by the then Manager and the case was registered for the offence under 409, 420 IPC read with 34 IPC. Enquiry Officer has given a detailed Enquiry Report considering each and every piece of oral and documentary evidence before him and came to the conclusion that all the eight charges are proved beyond reasonable doubt and the act of the workman is clear violation of Regulation 19 of Pragathi Gramin Bank (Employees and Officer) Service Regulations 2005 presently Regulation 20 of Kaaveri Gramin Bank Employees Officer regulation 10

7. As Order Sheet of 25.10.2006 suggests, MW 1 was cross-examined by the learned counsel despite knowing the fact that the 1st Party is no more. If the 1st party counsel had reported the death of 1st Party workman within reasonable time then there was no authority for the learned counsel to continue vakalat anymore on behalf of the deceased workman. In the given circumstance, it shall be deemed there is no claim before this tribunal in respect of the referred issue. However, management through its evidence has established that they had proved the charges before the Enquiry Officer through cogent evidence. Since the allegation pertains to misappropriation of public money, cheating, any continuation of the workman in the institution would have been hazardous and rightly he is dismissed from service. Hence,

AWARD

Reference is Rejected

(Dictated to U D C, transcribed by him, corrected and signed by me on 4th April 2019)

JUSTICE SMT. RATHNAKALA, Presiding Officer

नई दिल्ली, 11 जून, 2019

का.आ. 1038.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण बेंगलूर के पंचाट (संदर्भ संख्या 16/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 11.06.2019 को प्राप्त हुए थे।

[सं. एल-12025/01/2019-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 11th June, 2019

S.O. 1038.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 16/2014) of the Central Government Industrial Tribunal-cum-Labour Court Bangalore, as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 11.06.2019.

[No. L-12025/01/2019-IR (B-1)]

B. S. BISHT, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
BANGALORE**DATED : 20TH MAY 2019**PRESENT :** Justice Smt. Rathnakala, Presiding Officer**I.D No. 16/2014****I Party**

Sh. Rahul,
H. No. 31, Chetana Colony,
Manjunath Nagar,
Gokul Road,
Hubli – 580 030.

II Party

The Regional Manager and
Disciplinary Authority,
State Bank of India,
Region V, Administrative Office,
T. S. Complex, Keshwapur,
Hubli – 580 023.

Appearance

Advocate for I Party : Mr. Anant P. Savadi

Advocate for II Party : Mr. Ramesh Upadhyaya

AWARD

1. This petition is filed under section 2A of the Industrial Dispute Act 1947. The 1st Party workman has sought to declare the order dated 23.11.2013 dismissing him from service by the Employer/Respondent. He is challenging the dismissal order on various grounds like the charge sheet issued to him was not in accordance with Bipartite Settlement, it was highly vague in nature; the subsistence allowance was not paid during the suspension period; the enquiry was held in violation of principles of Natural justice; enquiry findings were perverse and the same is accepted mechanically by the Disciplinary Authority to pass the punishment order etc.

2. The 2nd Party had denied the petition allegations in its objection statement and sought to dismiss the petition.

3. On completion of the pleadings there was a break in the trial, when the notice was issued to the 1st Party same could not be served and was returned with the shara 'LEFT'. In the absence of the 1st Party or his Counsel, there is no use in continuing the proceedings. The Petitioner has failed to prosecute his case.

AWARD

The claim is dismissed for non-prosecution. Petitioner is not entitled for any relief.

(Dictated, transcribed, corrected and signed by me on 20th May, 2019)

JUSTICE SMT. RATHNAKALA, Presiding Officer

नई दिल्ली, 11 जून, 2019

का.आ.1039.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कर्नाटक बैंक लिमिटेड प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण बेंगलूर के पंचाट (संदर्भ संख्या 10/1998) को प्रकाशित करती है जो केन्द्रीय सरकार को 11.06.2019 को प्राप्त हुए थे।

[सं. एल-12012/97/87-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 11th June, 2019

S.O. 1039.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 10/1998) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore, as shown in the Annexure, in the Industrial Dispute between the management of Karnataka Bank Limited and their workmen which were received by the Central Government on 11.06.2019.

[No. L-12012/97/87-IR (B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
BANGALORE – 560 022**

DATED : 20TH MAY 2019

PRESENT : Justice Smt. Rathnakala, Presiding Officer

C.R No. 10/1988

<u>I Party</u>	<u>II Party</u>
Sh. M. Rama Rao, No. 9, Corporation Building, Broadway, Hubli – 580 020.	The Chairman, Karnataka Bank Limited, Head Office, Mangalore – 575 003.

Advocate for I Party : Advocate for II Party:

Party in Person Mr. Ramesh Upadhyaya

AWARD

The Central Government vide Order No.L-12012/97/87-D.IV(A) dated 07.03.1988 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

“Whether the action of the Management of Karnataka Bank Limited in terminating Shri. M. Rama Rao, Special Assistant, with effect from 14.09.1985 is justified? If not, to what relief the workman entitled?”

1. The 1st Party workman joined the service of the 2nd Party in the year 1971 as Probationary Clerk his service was confirmed and was posted as Special Assistant at Durgadail Hubli Branch; he was also the General Secretary of Dharwad District Bank Employees Association and certain other unions of the Bank Employees. He was issued charge sheet dated 02.11.1981, 30.11.1983, 01.12.1983, 18.02.1985 and 28.02.1985; he had submitted his reply to all the charge sheets. By order of the General Manager of the 2nd Party Domestic Enquiry was initiated in respect of the above charges. Retired District Judge was appointed as the Enquiry Officer; on 3 dates enquiry sitting was held on the first and second dates of 05.08.1985 and 03.09.1985 the Enquiry Officer recorded that, the notice of enquiry is not served on the Charge sheeted Employee; on the 3rd enquiry sitting of 15.10.1985 the Management Representative filed a memo which read as under:-

The above member was evading Enquiry Notices from the beginning. Management for the reasons stated in their Termination Notice order No. HO/PIR/P/1709/85 dated 14.09.1985 have terminated his services to come into effect from 16.09.1985. In view of the above circumstances, the Domestic Enquiry against the member may please be discontinued; The Enquiry Officer accordingly discontinued the enquiry.

2. The termination order issued to the 1st Party workman read as under :-

The Enquiry leveled against under charge sheets :

1. HO/PIR/14284/81 dated 2.11.81
2. HO/PIR/D/16779/83 dated 30.11.83
3. HO/PIR/D/16808/83 dated 1.12.83
4. HO/PIR/D/4187/85 dated 18.2.85 and
5. HO/PIR/D/4961/85 dated 28.2.85

are pending enquiry and no progress could be made on account of the delaying tactics adopted by you. You, instead of defending the enquiry on its merits, have resorted to highly objectionable activities with a view to pressurising the management to drop the charges. You have even gone to the extent of scandalizing the Enquiry Officer and the Bank through the Press. You have started indulging in defamatory publications against the Bank calculated to undermine the confidence of the depositor in the Bank.

In view of these circumstances, the Bank finds it inexpedient to retain you any longer in service and accordingly your services are terminated in terms of para 19.12(c) of the Bipartite Settlement 1966, with effect from the date of service of the order.

We enclose herewith a pay order in your favour for a sum of Rs. 3,173. (Rupees Three thousand one hundred seventy three and paise twenty only) being % one month's salary.

Any other dues payable to you may be collected from the Bank. Please acknowledge the receipt.

3. The order of termination is not served on the 1st Party personally and he has not received P.F and gratuity amount consequential upon the termination order.

4. The 1st Party in his claim statement contends that he was the Office Bearers of many trade unions. For his trade union activities he is harassed and victimized by the 2nd Party. By virtue of his positions in the unions he is a protected workman as per the provisions of the Industrial Dispute Act. Many trade unions had protested against holding of the enquiry against him and demanded withdrawal of their malafide steps. They had illegally terminated his service through a news paper advertisement on 16.09.1985 in Samyukta Karnataka, Kannada Daily, published from Hubli. Such termination of the service of a Staff through sudden Newspaper advertisement is not provided in the Awards/Bipartite Settlements. They attempted to physically assault him on 16.09.1985 for which he lodged Police Complaint, they have invoked section 36 AD of the Banking Regulation Act, without sufficient ground. They filed a Criminal Case against him at Mangalore which is at a distance of 440 Kms from his residence. They instigated certain antisocial elements so as to cause the destruction of the documents pertaining to the service conditions of the 1st Party by setting fire to the Office of Dharwad District Bank Employees Association on 14.09.1987 night, Complaint was lodged to the police, due to fire, several documents are lost. In addition they have filed a suit in Civil Court of Hubli, for recovering the loans availed by him in one instalment, against the rules of sanction. They have closed the Fixed Deposit standing in his name and withdrew the overdraft facility standing in his name. His termination under Para 19.12 (c) under Bipartite Settlement is unconstitutional. He is unemployed.

5. The 2nd Party countered the above statement on following lines:-

Being involved in various trade unions he was unable to devote full attention to Bank work. Hence, Charge Sheet was issued in November 1981, on the complaint made by Hotel Owners 2nd Party issued charge sheet dated 30.11.1983. He was said to be contesting for the corporation of Hubli and Dharwad from Communist Party of India despite intimation to desist from participating in elections, he has contested the election. In this regard another charge sheet was issued. He again contested from the Graduates Constituency for membership of Karnataka Legislative Council as an independent candidate in the election held on 24.06.1984 and another charge sheet dated 27.02.1985 was issued on identical charges. In the mean while, he made reference to Assistant Labour Commissioner, Mangalore through Karnataka Bank Employees Association about the rejection and sought to permit him to contest the election. The Assistant Labour Commissioner rejected to entertain the same as an Industrial Dispute. The Association filed a Writ Petition before the Hon'ble High Court by arraying the Bank as 2nd Respondent. He coerced one of the Investigating Officer when he visited the Branch Office on 18.02.1985; in this regard another charge sheet was issued.

6. It is further stated by the 2nd Party that in respect of the pending cases, Sh. Seva Nami Raja Malla, Retired District Judge was appointed as Enquiry Officer. The order of said appointment was communicate to him; the association of which he was the General Secretary at his instance issued telegrams followed by letters urging to withdraw the charges. He started publishing in the News Paper 'DDBEA DHWANI' (of which he is the editor and publisher) about the entrustment of the matter to the Enquiry Officer for conducting Domestic Enquiry and expressing that the proposed domestic enquiry was a 'Drama' which should be dropped by the Management failing which, he would resort to agitation. He avoided the enquiry notices; he wrote articles in his paper against the appointment of the Enquiry Officer, General Manager and the Chairman of the Bank etc. The paper cuttings of 'DDBEA DHWANI' indicated that he was aware of the charge sheet issued against him and was determined to frustrate enquiry. He had written letter to Government of Karnataka, requesting the Chief Minister that Government funds should not be deposited in Karnataka Bank Limited as the financial position of the Bank was not strong. The gravity of the situation was such, that they had to take some serious action in self interest only, for survival. The Management concluded with no useful purpose would be served by the enquiry against the employee, who is determined to foil the enquiry. Accordingly the order of termination was passed in terms of para 19.12(c) of the Bipartite Settlement, 1966. The termination order though was published in the notice board since he refused to receive it; he tried to maintain that he was unaware of the termination order. He lodged false complaint against the Officials of the Bank who attempted to serve the termination order. Hence, it became

incumbent on the Bank to publish Termination order in Indian Express dated 02.09.1985. The Bank has taken lenient view and has withheld one increment with the effect of postponing future increment. The order of termination is not by way of Disciplinary Action. Hence, they did not consider his request/appeal as it does not cover under any provisions of the Bipartite Settlement. The civil suit filed by the Bank for recovery of the Loan is legal, the allegation of harassment, victimization etc., levelled by him in his claim statement are all false.

7. The 1st Party examined himself as WW-1 and marked documents Ex W-1 to Ex W-194. During cross examination of WW-1 Ex M-1 and Ex M-2 are marked. Both have submitted oral and written arguments, as such it was for the 2nd Party to justify their action in terminating the 1st Party from service. Unfortunately no evidence is adduced from their side. My Learned Predecessor in office vide order dated 17.11.2017 (even after closure of 1st Party evidence) afforded opportunity to adduce evidence in support of their stand taken in the counter statement, which was not availed by the 2nd Party.

8. As such this is not a civil dispute warranting a full fledged trial, if the dispute could be adjudicated on the basis of records. The documents marked during the course of examination of WW-1 are Ex M-1 the paper publication 'DDBEA DHWANI' dated 27.7.1985 where in there is writing of both in Kannada and English language attacking the charge sheet issued to the workman and the enquiry proposed there on; Ex M-2 is the Pamphlet (hand will) pertaining to the 1st Party when he contested for Karnataka State Legislative Council, Graduate Constituency (West). Any interference with regard to the allegation made against the 1st Party workman in the statement of the 2nd Party is not permissible since the action taken against him is not by way of Disciplinary Action. Wherefore it is incumbent to directly deal with the legality of the termination order which is passed under Para 19.12(c) of the Bipartite Settlement 1966.

9. The said provision [Para 19.12(c)] is reproduced by the 1st Party in his written arguments read as under: -

"In awarding punishment by way of disciplinary action, the authority concerned shall take into account, the gravity of misconduct, the previous record, if any, of the employee and any other aggravating or extenuating circumstances that may exist. Where sufficiently extenuating circumstances exist, the misconduct may be condoned and in case such misconduct is of the "gross" type, he may be merely discharged, with or without notice or on payment of a month's pay and allowance, in lieu of notice. Such discharge may also be given where the evidence is found to be insufficient to sustain the charge and where the Bank does not, for reason or other think it to expedient to retain the employee in question any longer in service. Discharge in such cases shall not be deemed to amount to disciplinary actions."

10. Unfortunately the 2nd Party failed to produce the records pertaining to the circumstances which calumniated in issue of charge sheets to the workman. From the minutes of enquiry there is nothing indicating that the CSE has purposefully avoided the enquiry. The termination order is passed during the pendency of the enquiry, thereafter enquiry was discontinued. Wherefore obviously there is nothing to appreciate that he played delay tactics to strand the enquiry. Without an oral evidence this Tribunal on its own cannot intern what was the perception of the Management on the New item published by the 1st Party workman at Ex M-1 to uphold the order of termination.

11. Sh. RU for the 2nd Party submits that, the Law Officer, The Assistant General Manager, and the Enquiry Officer had filed their affidavits before this Tribunal on 23.11.1988 along with documents. But because of the intervening Writ Petition filed by the 1st Party before the Hon'ble High Court and the trial was discontinued for a long time, authors of the affidavits are not available. Their affidavits disclose the various activities indulged by the 1st Party outside the scope of his employment, publishing the articles derogatory and against the interest of the Bank, holding Dharna, contesting the elections against the instructions issued to him etc., are the gross misconducts which are not at all disputed by him. He had made several allegations against the chairman of the 2nd Party which is highly unbecoming on the employee of the Bank. It is not mandate in each and every case to hold Domestic Enquiry in an Industrial Adjudication under Industrial Dispute Act 1947. He was very much aware of the enquiry as indicated in the News Paper Ex M-1 despite the same he did not attend the enquiry, he had no intention to participate in the enquiry his answers given during cross examination is evading.

12. Learned Counsel Sh. RU further places his reliance on the Judgment of the Apex Court reported in (2005) 7 SCC 764 between Ajit Kumar Nag vs General Manager (PJ), Indian Oil Corporation Limited, Haldia and others dated 19.09.2005. It was the dismissal of a Senior Officer of the Indian Oil Corporation and on certain allegations was dismissed from service without holding formal enquiry. The certified Standing Order of the Company provided for such action relevant provision which was pressed into action by the Management was Standing Order 20(iv) which read thus:-

'Where a workman has been convicted for a Criminal Offence in a Court of Law or where General Manager is satisfied for reasons to be recorded in writing that it is neither expedient nor in the interest of security to continue the workman, the workman may be removed or dismissed from service without following the procedure laid down under III of this clause'. The employee challenged the order of his dismissal before Hon'ble High Court but was not successful. His appeal also failed. He filed a substantive petition under Article 32 of Constitution of India, challenged the validity and vires of Clause (vi) of standing order 20 of the certified

standing order of the Corporation. He had also filed a special leave petition against the order passed by the Division Bench of the Hon'ble High Court in his appeal. The Apex Court noticed that sufficient guidelines and safeguards have been provided in the standing orders themselves such as (i) Power is conferred on the highest Administrative head of the Corporation, (ii) Eventualities were specifically and expressly stated in the clause (vi), (iii) Satisfaction of the General Manager that such an eventuality has arisen, (iv) Recording of reasons in writing, (v) Right of Appeal against the decision of the General Manager.

13. Further, the Apex Court observed that order under challenge was a self contained order with detailed reasoning. The General Manager had recorded the statement of eye witnesses who were present at the spot while the employee was behaving violently by assaulting the Duty Doctor and disturbing the whole environment in the Hospital. This Judgment in way lends its hand to the case of the 2nd Party for many reasons. (i) The employee was a Senior Officer of the Corporation had not pressed into service adjudication under section 11-A of the Industrial Dispute Act. The 2nd Party has taken away his right of Appeal, since the order is passed by Chairman of the Bank, who in the matter of punishment orders in Disciplinary Proceedings is the Appellant Authority. (ii) The order under challenge therein was a detailed and reasoned order. (iii) Though there is reference to the phrase 'Labour Law' during the course of discussion nowhere the litigant therein is recognised as a 'Workman' under the provision of section 2(s) of the Industrial Dispute Act.

14. Learned Counsel Sh. RU placed his reliance yet on another Judgment (2013) 6 SCC 313 in the matter of Manoj H Mishra vs Union of India and others. In this case the Apex Court upheld the dismissal of the workman on finding that during Disciplinary proceedings he had admitted the charges. But that is not the situation in the case on hand. For each and every charge sheet the workman had replied denying the allegations before enquiry was initiated. Assuming for a while that by his contemptuous writings in the News Paper and activity is hostile to the Management and unbecoming of a employee, 1st Party had become so dangerous that it was inevitable to remove him from service, then it was for the 2nd Party to display before this Tribunal how the conduct was precarious outrageous and it was not in the interest of the Bank to allow him to continue. After filing the counter statement the 2nd Party had filed affidavits of all the concerned i.e. the Enquiry Officer and Senior Officials of the Bank etc., It was only subsequent to 2005 by bringing amendments to civil procedure code there by the procedure of filing affidavit in lieu of examination in chief evidence was legally accepted. The 1st Party had filed application to bring Authors of affidavits (supra) before the Tribunal for cross examination, and his application was rejected.

15. This is not for the Tribunal to form opinion against the workman by reading in between lines of records, in the absence of evidence by 2nd Party. The procedure before this Court is not in strict adherence to rules of Civil Procedure of Evidence Act. But the parties are required to present before this Tribunal their statements in writing followed by oral and documentary evidence. The 2nd Party herein is not defendant as in a Civil Suit or an accused person of a Criminal Case. Though strict obedience to Evidence Act is not called for in an Industrial Adjudication under the provisions of the Act. We cannot skip the elementary principle that a party who asserts a fact shall prove the same. The authors of the affidavits of Authorities who were at helm of affairs for termination of the 1st Party if not available at this point of time there must be records pertaining to the charge against him maintained during the course of administration, non production of such document invites adverse inference against 1st Party.

16. Going by para 19.12(c) of the certified standing order it is required that they have to take into consideration the gravity of misconduct, his previous record and any other aggravating or extenuating circumstances that may exist. Putting an end to the service of a workman in the mid way of his carrier is not a simple thing to be done at a stroke to be forgotten forever. The authority which is responsible for the Termination ought to have assigned its reasons in a detailed order when and how the conduct of the 1st Party workman amounted to grave misconduct. It is obvious having issued charge sheet and dispensing with the enquiry they have passed the punishment order. Though they claim it is not a punishment order but a termination simpliciter, virtually it is not so. Having issued charge sheet without proving the charges they have passed the order which virtually ceased the carrier of the 1st Party workman. Way back in 1991 the matter of Omprakash Goel vs Himachal Pradesh Tourism Development Corporation Ltd., Shimla and another, 1991 SSC (L&S) 911 the Apex Court held that punishment order passed before conclusion of enquiry on the ground of misconduct was in substance punitive..... It is only a camouflage with a view to avoid the enquiry under Article 311(2) of the Constitution, then such termination is liable to be quashed. Added to this the complaint lodged by the 2nd Party against the 1st Party workman ended in his acquittal.

17. The 1st Party in his written arguments has contended that he is victimized because of his trade union activities and he worked only after the office hours and he is entitled for special leave as a protected workman and as the office bearer of the registered unions under the Bipartite Settlement he is entitled for the benefits of special category and also for special facilities. For the moment the Tribunal will not expand its scope beyond what is referred for adjudication,

things stand to the point that the Termination order is not a speaking order. The allegations made therein i.e. *resorting to highly objectionable activities with a view to pressurising the management to drop the charges and going to the extent of scandalizing the Enquiry Officer and the Bank through Press and indulging in defamatory publications against the Bank calculated to undermine the confidence of the depositor in the Bank are not proved.* Hence, my answer to the above referred issue is in the negative against the Management.

18. Now comes the question of moulding the relief. The workman has already crossed the age of superannuation long back, it is already more than 30 years since the dispute was referred to this Tribunal for adjudication. From the order sheet I find the matter was stayed by the Hon'ble High Court for some time and from 29.01.1993 till 20.05.2010 the file was not brought to the open Court. Interim relief was an issue between the parties and both sides had led evidence as per the direction of the Hon'ble High Court; time was also spent on the application calling for documents etc. The 1st Party is an active Trade Union Activist and he represents and conducts cases of workmen in other cases. The claim that he is unemployed and he is sustaining himself on huge loan from his friends who support his causes, he claims that he is not given the one month salary which they claim to have appended to the termination order. In the usual course 100% back wages is in the relief whenever the dismissal/termination is found illegal and set aside. The 1st Party workman though contends that he is unemployed, he conducts cases on behalf of the workmen in other case, before this Tribunal probablizing that he is sustaining on his own. In the facts and circumstances I am of the considered opinion that he is entitled for 50% of the back wages from the date of his termination till the date of his superannuation with 100% gratuity and provident fund amount. Hence, the following.

AWARD

The reference is accepted. The 2nd Party is directed to pay to the 1st Party Workman Sh. M Rama Rao 50% of the Back wages in lump sum from the date of his termination i.e. from 14.09.1985 till the date of his superannuation and 100% of Gratuity and Provident Fund amount for the above period. The order shall be complied within 60 days of publication of the award failing which the amount shall carry future interest at 8% per annum.

(Dictated, corrected and signed by me on 20th May, 2019)

JUSTICE SMT. RATHNAKALA, Presiding Officer

नई दिल्ली, 11 जून, 2019

का.आ. 1040.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स सिंगारेनी कोलियरीज कंपनी लिमिटेड के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 20/2017) को प्रकाशित करती है जो केन्द्रीय सरकार को 06.06.2019 को प्राप्त हुए थे।

[सं. एल-22012/103/2016-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 11th June, 2019

S.O. 1040.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 20/2017) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad, as shown in the Annexure, in the Industrial Dispute between the management of M/s. Singareni Collieries Company Ltd., and their workmen which were received by the Central Government on 06.06.2019.

[No. L-22012/103/2016-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT
HYDERABAD****Present:** Sri Muralidhar Pradhan, Presiding OfficerDated the 1st day of May, 2019**INDUSTRIAL DISPUTE No. 20/2017****Between:**

Sri Bandari Satyanarayana,
Sr. Vice President & Sreerampur Divn. President
Rashtriya Collieries Mazdoor Sangh (RCM)(INTUC)
Rajkumar Complex, Saibaba Temple Road,
Jaffar Nagar, Mancherla – 504208.
Adilabad Distt.

...Petitioner

AND

The General Manager,
M/s. Singareni Collieries Company Ltd.,
Srirampur Area, Adilabad Distt.
(Telengana)-504303.

... Respondent

Appearances:

For the Petitioner : None

For the Respondent : M/s. P.A.V.V.S. Sarma & Vijaya Laxmi Panguluri, Advocates

AWARD

The Government of India, Ministry of Labour by its order No. L- 22012/103/2016-IR(CM-II) dated 14.6.2017 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of M/s. Singareni Collieries Company Limited and their workman. The reference is,

SCHEDULE

“Whether the action of the General Manager, M/s. Singareni Collieries Co. Ltd., Srirampur Area, Adilabad Dist., in terminating the services of Sri Banoth Lakya, Ex. CF, RK-7 Incline, Srirampur Area, with effect from 3.3.1998 without conducting of fair and legal disciplinary proceedings is legal and justified? If not, to what relief the workman is entitled to and from which date?”

The reference is numbered in this Tribunal as I.D. No. 20/2017 and notices were issued to the parties concerned.

2. The case stands posted for filing of claim statement and documents by the Petitioner.
3. In spite of repeated calls, the Petitioner did not turn up. Several opportunities have been given to the Petitioner Workman to attend the court to prosecute his case. But the Petitioner workman failed to attend this Tribunal which clearly indicates that perhaps the dispute of the Petitioner workman has already been settled and the Petitioner has nothing to raise any claim against the Respondents. Hence, the case of the Petitioner workman is closed and a ‘No dispute’ award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this the 1st day of May, 2019.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the
Petitioner

NIL

Witnesses examined for the
Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 11 जून, 2019

का.आ. 1041.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स सिंगारेनी कोलियरीज कंपनी लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 33/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 06.06.2019 को प्राप्त हुए थे।

[सं. एल-22012/5/2015-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 11th June, 2019

S.O. 1041.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 33/2015) of the Central Government Industrial Tribunal-cum-Labour Court Hyderabad, as shown in the Annexure, in the Industrial Dispute between the management of M/s. Singareni Collieries Company Ltd., and their workmen which were received by the Central Government on 06.06.2019.

[No. L-22012/5/2015-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD**

Present: Sri Muralidhar Pradhan, Presiding Officer

Dated the 1st day of May, 2019

INDUSTRIAL DISPUTE No. 33/2015**Between:**

The President (Bandari Satyanarayana)
Rashtriya Collieries Mazdoor Sangh (INTUC)
Rajkumar Complex, Saibaba Temple Road,
Jaffar Nagar, Mancherla – 504208.
Adilabad Distt.

...Petitioner

AND

The General Manager,
M/s. Singareni Collieries Company Ltd.,
Ramagundam-I Area, Godavarikhani – 505209.
Karimnagar Distt. (Telangana)

...Respondent

Appearances:

For the Petitioner : None

For the Respondent : Sri V.S.V.S.R.K.S. Prasad, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L- 22012/5/2015-IR(CM-II) dated 5.5.2015 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of Life Insurance Corporation of India and their workman. The reference is,

SCHEDULE

“Whether the action of the General Manager, M/s. Singareni Collieries Co. Ltd., Ramagundam-I Area, Godavarikhani, Karimnagar Dist., in terminating the services of Sri Nerella Thirupathi, Ex. Coal Filler, GDK-2A Inc., RG-I Area with effect from 21.4.2010 is justified or not? If not, to what relief the applicant is entitled for?”

The reference is numbered in this Tribunal as I.D. No. 33/2015 and notices were issued to the parties concerned.

2. The case stands posted for filing of claim statement and documents by the Petitioner.

3. In spite of repeated calls, the Petitioner did not turn up. Several opportunities have been given to the Petitioner Workman to attend the court to prosecute his case. But the Petitioner workman failed to attend this Tribunal which clearly indicates that perhaps the dispute of the Petitioner workman has already been settled and the Petitioner has nothing to raise any claim against the Respondents. Hence, the case of the Petitioner workman is closed and a ‘No dispute’ award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this the 1st day of May, 2019.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the
Petitioner

NIL

Witnesses examined for the
Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 11 जून, 2019

का.आ. 1042.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स फूड कारपोरेशन ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय संख्या 2, चंडीगढ़ के पंचाट (संदर्भ संख्या 44/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 11.06.2019 को प्राप्त हुए थे।

[सं. एल-22011/16/2015-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 11th June, 2019

S.O. 1042.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 44/2015) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Chandigarh, as shown in the Annexure, in the Industrial Dispute between the management of M/s. Food Corporation of India and their workmen which were received by the Central Government on 11.06.2019.

[No. L-22011/16/2015-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. Singh, Presiding Officer

ID No.44/2015

Registered on:-18.12.2015

Sh. Inder Jeet Singh, General Secretary, Lal Jhanda FCI Workers
and Paledar Union (CITU), Patran Depot, Patiala-Punjab.

... Workmen-union

Versus

Area Manager, FCI, District Officer, Sirhind Road,
Near Anaj Mandi, Patiala, Punjab-147001.

...Management

AWARD

Passed on:-22.05.2019

Central Government vide Notification No. L-22011/16/2015-IR(CM-II) Dated 30.09.2015, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

“Whether the action of Management of Food Corporation of India of not changing the cadre of Shri Gualab Singh from Ancillary Labour (A/L) to Handling Labour(H/L) is fair, legal and justified? If not, what relief the workman concerned is entitled to and from which date?”

1. It is clear from the record that notice was sent to the parties when the reference was received by this Tribunal. However, workers-union appeared and filed statement of claim, pleaded that the Manager(Depot)FCI, FSD Patran issued an office letter No.IR-7(4) FSK/TMC/Compt/03/Voi(Change of Cadre A/L to H/L) dated 4.5.2013 and the H/L and A/L workers position as on 1.4.21997 was 75 and the workman had applied for promotion from A/L to H/L work. Thereafter, a list was prepared vide order dated 20.08.2013 and the name of claimant/workman Gulab Singh was enlisted at serial no.5 and CPF No.23870 was allotted to him. The Manager(IR-L) again issued a letter bearing No.IR-/Gen/Labour RJP/2008/388 dated 10.04.2013 and the name of workman was at serial no.5 and the Manager(D) has recommended that all 11 applicants are fit to perform the duties of H/L and intimated that if these A/L are promoted as H/L work of A/L labour will not suffer at Patran Depot and the same was sent to the Assistant General Manager, IRL, FCI Regional Office, Chandigarh. On 28.06.2013, Manager IRL issued a letter bearing No.IR10(5)/DPS/2010/546 regarding the change of cadre A/L to H/L in respect of DPS Labour of FSD Patran with the observation that approval of competent authority is hereby conveyed to change the cadre of 7 Senior Most A/L from the list of 11 Ancillary Labours being send to this office vide office letter no.388 dated 10.04.2013. Due to the collusing with labourers union, District Manager, Patiala prepared the false and bogus list of labourers namely Parkash Singh, Shadi Singh, Major Singh, Pala Singh, Uggar Singh, Lalu Singh and Godha Singh on the false ground of physical and obtained the false medical certificates of these persons. That there is no requirement of physical test in the office of FCI Nabha and Patiala as well as depot of Patran and the workman is entitled to be appointed as per list prepared vide office order no.FCI FSD/Patran/IR-AL/2013-14 dated 20.08.2013 on the post of H/L along with arrears of wages and interest @ 18% per annum from the date of due to actual till realization.

2. Respondent-management filed written statement pleaded that the workman Gulab Singh is physically unfit for the job of handling worker which is basic requirement for a worker to be appointed as handling labour and the physical test was conducted on 31.08.2013 by a committee of three officers appointed by Area Manager, FCI Patiala in which the workman could not qualify the said test. As a result of fitness test conducted by the said committee, the applicant being unfit is not entitled to be appoiointed as Handling Lanour and the list prepared by Sh. Anil Parves AG1(D) FCI, Patran was issued show cause notice dated 5.8.2013 for this lapse of preparation of list of 11 ancillary labourers for change of their cadre on 1.4.2013 and therefore the claim of worker as filed, is liable to be dismissed.

3. Opportunity was given to both the parties to adduce evidence but, claimant/workmen opted to abstain away from the proceedings. Consequently, opportunity of workman to adduce evidence is closed on 06.03.2019.
4. The management has also not filed any evidence as such, opportunity of both the parties for adducing evidence has been closed.
5. Heard the learned counsel of management and perused the record.
6. Since the claimant/worker has neither put his appearance nor has led any evidence so as to prove his cause against the management, as such, this Tribunal is left with no choice, except to pass a 'No Dispute/Claim Award'. Since there is no adjudication of reference or case on merits as such, it would not preclude the workmen from seeking fresh reference or filing fresh case in accordance with Law.
7. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

A. K. SINGH, Presiding Officer

नई दिल्ली, 11 जून, 2019

का.आ. 1043.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स फूड कारपोरेशन ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, बंगलौर के पंचाट (संदर्भ संख्या 62/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 11.06.2019 को प्राप्त हुए थे।

[सं. एल-22012/126/2001-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 11th June, 2019

S.O. 1043.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 62/2007) of the Central Government Industrial Tribunal-cum-Labour Court Bangalore, as shown in the Annexure, in the Industrial Dispute between the management of M/s. Food Corporation of India and their workmen which were received by the Central Government on 11.06.2019.

[No. L-22012/126/2001-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE – 560 022

DATED : 23rd MAY 2019

PRESENT : JUSTICE SMT. RATHNAKALA, Presiding Officer

C R No.62/2007

<u>I Party</u>	<u>II Party</u>
The Regional Secretary, Food Corporation of India Employees Union, Pallavi Complex, Subbaiah Circle, Mission Road, BANGALORE – 560 027.	The Senior Regional Manager, Food Corporation of India, Regional Office, Pallavi Complex, Subbaiah Circle, Mission Road, BANGALORE - 560 027.

Appearances

I Party : Shri S Raju, Advocate

II Party : Sh. B L Sanjeev, Advocate

1. The Government of India, Ministry of Labour, vide order No. L-22012/126/2001-IR(CM-II) dated 04.05.2007 in exercise of the power conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred as "The Act") (14 of 1947) referred the following Industrial Dispute to this Tribunal for adjudication:

SCHEDULE

"Whether the claim of the Food Corporation of India Employees Union relating to the seniority and promotion in respect of Shri P.S. Raghavendra Rao, Assistant Grade-I(Gen), Bangalore is admissible? If yes, to what relief is the workman entitled?"

2. The case of the 1st Party Union is :

The 1st Party workman joined the service of the 2nd Party on 19.05.1966 as Stenographer Grade-II, subsequently, he was promoted as Assistant Grade – I, in the year 1974. As per the rule in the 2nd Party the Employee who is appointed as Stenographer Grade – II/ Assistant Grade – II (General) will be further promoted as Assistant Grade – 1 and then as Assistant Manager(General) and Stenographers will be put in common seniority with Assistant Grade –I(General) i.e., the Stenographers cadre would be lost in Assistant Grade-II level itself. The 1st Party was eligible as Assistant Manager during the year 1976 along with some of his co-employees in the cadre of Assistant Grade – 1 (General) but he was not given promotion as Assistant Manager. Since his request for promotion as Assistant Manager was not considered he filed a writ petition before the Hon'ble High Court of Delhi along with similarly placed co-employees. The Writ Petition was allowed directing the 2nd Party to give effect to the claim of the Writ petitioners. Similar order was passed by the Hon'ble High Court of Madras. Based on the interim order, the Zonal Office issued promotional order and subsequently confirmed the promotion vide order dated 16.08.1996 w.e.f. 25.06.1976, the 2nd Party fits to the post of Seniority of Assistant Grade – 1/ Stenographers as on 30.09.1975; the Seniority of the 1st Party was revised and refixed as 270(q) immediately after Sh. Balarama Murthy. He is placed above the juniors Sh. YSS Shastri, Rajashekara Rao, however, while issuing the promotion order with retrospective effect i.e., 25.06.1996 his name is not included, though there was no adverse remarks of any kind in his Service Record during the year 1976. His several requests to rectify the anomaly of denying the promotional benefit to him has gone in vain.

Further it is said that the 1st party workman was dismissed from service during 1985 on allegations. The appeal preferred by him to the Zonal Office was allowed and the dismissal order was set aside. He retired from service on attaining superannuation during November 2002. He ought to have been promoted along with his juniors w.e.f. 25.06.1996 from the cadre of Assistant Grade – 1 to that of Assistant Manager.

3. The 2nd Party countered the claim on following lines:

'the claim is not maintainable. As per the promotion policy adopted in the 2nd Party the Assistant Manager (General) is a selection post, selected on merit cum seniority, the Assistant Grade – I coming under the zone of consideration will be selected on Annual Performance report. The merited Assistants were empanelled in 1976. 1st Party did not possess required merit to consider him for the promotion post of Assistant Manager (General). Though he was in the panel of promotion he could not be selected due to his low grading. Adverse remarks and low remarks are equal. The adverse remark if noticed in the Annual Performance Report then only it will be communicated to the workman but low grading since not an adverse remark is not communicated to him. The Hon'ble High Court of Madras in Writ Appeal 376 – 377/1983 ordered to promote all the Stenographers who would get the benefit from the Order of the Delhi High Court in the ROTA – QUOTA case (Deep Chanth case of 1983). The direction was pertaining to the Petitioners of those cases who could not get themselves empanelled because of lesser grade. He lost his seniority during 1985 for the post of Assistant Grade – 1, in view of the Departmental proceedings initiated against him; he was imposed the penalty of dismissal w.e.f. 16.09.1984, the Appellate Authority modified the order of dismissal of service to that of reversion from the post of Assistant Grade – I (General) to the post of Assistant Grade – II (General) further, he was not eligible for promotion for the period of 5 years. Further his name which was on the top of Assistant Grade – II (General) in the Seniority list came to Serial No. 283 in view of the order of Appellate Authority. Again he was promoted to the post of Assistant Grade-I (General) only during 1993. His seniority was at Sl. No. 283 in the Seniority list of Assistant Grade – I(General) as on 31.12.1999.

Further, it is contended that he was Charge Sheeted under major penalty clause while working as Assistant Grade – I(General) and after enquiry he was imposed the penalty of dismissal from service w.e.f. 30.08.1985. In appeal the punishment order was modified to that of 'reduction in rank from the post of Assistant Grade – I(General) to the post of Assistant Grade – II(General) for a period for 5 years fixing his pay at the minimum of Assistant Grade-II (General) scale with further direction that during the period of penalty he will not earn increments, the reduction will have the effect of postponing the future increment and he was debarred from promotion to the post of Assistant Grade – I (General) for a period of 5 years; on completion of 5 years he would

be considered for promotion as per the rules then existed'. His punishment order was modified by the Appellate Authority though there was no mitigating circumstances but on humanitarian ground.

Further, it is stated that the promotion order of eligible employees with retrospective effect from 25.06.1976 was issued in 1989. During the relevant time he was undergoing the punishment of reversion from the post of Assistant Grade – II to Assistant Grade – I for 5 years i.e., 14.10.1985 to 13.10.1990. He had to wait for his turn of promotion to the post of Assistant Grade – I (General). According to his seniority and availability of post. He was promoted to the post of Assistant Grade – I during the year 1993 according to his turn. He cannot claim promotion when there was no vacancy and he will not come under preview. After refixing his seniority as in the case of other Steno Grade – 1 in 1976 eligible gradation was assigned to him as in the case of other similarly placed. The procedure followed during 1976 (general) was followed after revision of the seniority of the 1st Party workman. But even after refixing of the seniority from the post of Assistant Grade – I(General) during 1976 he was not promoted as he was not merited as per his Annual Appraisal report.

4. Both parties have adduced evidence, documents Ex M-1 to 14 are marked for the 2nd Party and Ex W-1 to W-9 are marked for the 1st Party. Oral Arguments heard from the 2nd Party, 1st Party has submitted his written arguments.

5. After conclusion of the evidence at the instance of the 1st Party and as per the order of this Tribunal, the 2nd Party produced the Attested copies of the confidential reports pertaining to the 1st Party for the period from 1975 to 1985. All through this period, he has fared well. Then what came in his way of consideration for promotion from the cadre of Assistant Grade – I w.e.f. 25.06.1976, as on which date his Juniors were promoted is the point for focus.

6. The 2nd Party has parallel defence in this regard, 1st fold of their contention is, though there was no adverse remarks in his confidential report, his grading was low, second contention is he was punished for misconduct vide order dated 30.08.1985 with dismissal and in appeal the dismissal was modified by the appellate authority vide order dated 06.08.1986. By the said order he was reinstated subject to reduction in rank from the post of Assistant Grade – I (G) to AG (not legible) for a period of five years with following directions:

- i) His pay will be fixed at the minimum of time of pay of AG-II(G).
- ii) During the period of penalty he will not earn any increment and this will have the effect of postponement of future increment of pay.
- iii) He will not be considered for promotion for a period of five years and after completion of five years (not legible) will be considered for promotion as per existing rules.

Now from the confidential reports the contention of the 2nd Party that his grading was low stands negated. If that were to be so, the short question is 'whether he is entitled for promotion with retrospective effect 25.06.1976 the day when his Juniors were promoted?'

7. It is to be noted that he superannuated during November 2002 but has raised the dispute in the year 2007. He has not challenged the promotion granted to his Juniors so long he was in service. Without murmur he accepted his promotion from the grade of Assistant Grade – II(General) to Assistant Grade I (General) in the year 1993. Assuming that he was hesitant to challenge his department and his superiors while in service, what prevented him from raising the dispute immediately after his superannuation is not explained. Virtually no industrial dispute existed as on the date the union raised this dispute. The benefit now he is seeking for, is not towards any service rendered by him to the department, but by virtue of the judgements passed by the Hon'ble Delhi High Court dated 18.03.1983 and judgement of Hon'ble High Court of Madras dated 10.08.1984 that his seniority though was fixed at No. 270, he is not considered for promotion. The answer is explicit from his own showing that he was charge sheeted in the year 1983 and was imposed the dismissal order w.e.f. 10.09.1985. There appears to be no link between his annual Appraisals and the disciplinary proceedings he was undergoing. Assuming for a while that the Order of the Disciplinary Authority was confirmed by the Appellate Authority then there was no occasion for him to seek for promotion with retrospective effect on the ground that his confidential report is favourable. As such the punishment order is not set aside, it was modified. When there was a clear mandate in his punishment order that for the five years he will not earn any promotion, then there is no scope for him to look for promotion on the basis of the seniority list dated 31.01.1985. On his Superannuation there is no relationship of Employer and Employee between the parties. Therefore, the logical conclusion is the claim of the 1st Party Union relating to the Seniority and promotion in respect of P S Raghavendra Rao, is not justified, he is not entitled for any relief in this reference. Accordingly,

AWARD**Reference is rejected.**(Dictated to U D C, transcribed by him, corrected and signed by me on 23rd May 2019)

JUSTICE SMT. RATHNAKALA, Presiding Officer

नई दिल्ली, 11 जून, 2019

का.आ. 1044.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स सिंगारेनी कोलियरीज कंपनी लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 144/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 06.06.2019 को प्राप्त हुआ था।

[सं. एल-22013/01/2019-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 11th June, 2019

S.O. 1044.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 144/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad, as shown in the Annexure, in the Industrial Dispute between the management of M/s. Singareni Collieries Company Ltd., and their workmen which were received by the Central Government on 06.06.2019.

[No. L-22013/01/2019-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD****Present:** Sri Muralidhar Pradhan, Presiding OfficerDated the 26th day of April, 2019**INDUSTRIAL DISPUTE L.C.No. 144/2006****Between:**

Sri Kumbala Ramshankar,
S/o Narasaiah,
C/o Smt. A. Sarojana,
Advocate, Flat No.G7,
Rajeshwari Gayatri Sadan,
Opp: Badruka Jr. College for Girls,
Kachiguda, Hyderabad.

...Petitioner

AND

1. The General Manager,
M/s. Singareni Collieries Company Ltd.,
Ramakrishnapur Area, Adilabad District.
2. The Superintendent of Mines,
M/s. Singareni Collieries Company Ltd.,
RK-6 Incline, Ramakrishnapur,
Adilabad District.

...Respondents

Appearances:

For the Petitioner : M/s. A. Sarojana & K. Vasudeva Reddy, Advocates

For the Respondent : M/s. P.A.V.V.S. Sarma & Vijayalaxmi Panguluri, Advocates

AWARD

Sri Kumbala Ramshankar who worked as Badli Filler (who will be referred to as the workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondents M/s. Singareni Collieries Company Ltd., seeking for declaring the proceeding No. RKP/Per/R/008/6360 dated 13.11.2002 issued by Respondent No.1 as illegal, arbitrary and to set aside the same consequently directing the Respondents to reinstate the Petitioner into service duly granting all the consequential benefits such as continuity of service, back wages and all other attendant benefits etc., and such other reliefs as this court may deems fit.

2. **The averments made in the petition in brief are as follows:**

The Petitioner was initially appointed as badli filler on 23.3.2000 and posted to work at RK-6 Incline. He was regular to his duties during the year 2000. But during the year 2001 on account of his father's ill-health and other family problems the Petitioner could work only 96 days during the year 2001. While the matters stood thus, charge sheet dated 30.1.2002 was issued to the Petitioner by the Respondents alleging that the Petitioner absented for duty during the year 2001, which amounts to misconduct under company's Standing Order No.25.25. Subsequently, one enquiry was conducted and during the time of the enquiry, the Petitioner was not given any opportunity much less valid in nature to put forth his grievances. Basing on such lopsided enquiry, the Enquiry Officer held the charges as proved and basing on the erroneous findings of the Enquiry Officer, the Petitioner was dismissed from service with effect from 19.11.2002 vide office order dated 13.11.2002. It is stated that during the course of the enquiry the Petitioner has categorically stated about his inability to perform his duties regularly during the year 2001, was only on account of his father's ill-health. But without considering any of his submissions, the Petitioner was dismissed from service. It is also stated that the action of the Respondents' management in dismissing the Petitioner from service is wholly illegal, arbitrary, violative of the principles of natural justice. The Petitioner has rendered two years of continuous service in the Respondents' management till his dismissal. The Petitioner approached the Respondents to consider his case sympathetically, but the management did not pay any heed to it. Therefore, the Petitioner was constrained to approach this Tribunal to declare the impugned order No. RKP/Per/R/008/6360 dated 13.11.2002 issued by the Respondents is illegal and arbitrary and to set aside the same and consequently to direct the Respondents to reinstate the Petitioner into service duly granting all other attendant benefits such as continuity of service, back wages etc..

3. **The Respondents filed counter denying the averments made in the petition, with the averments in brief which runs as follows:**

In the counter the Respondents while admitting some of the factual aspects to be true, stated that the Petitioner was appointed in the Respondents' company on 24.3.2000 as a Badli Filler. He was dismissed from service on proved charges of absenteeism, after conducting a detailed domestic enquiry duly following the principles of natural justice. The Petitioner has attended the dates fixed for the enquiry and had fully participated in the enquiry. He was given full, fair and reasonable opportunity to defend himself in the enquiry. The enquiry was conducted purely following the principles of natural justice. It is stated that basing on the evidence adduced before the Enquiry Officer, the Enquiry Officer submitted his report holding the charges levelled against the Petitioner was proved. A copy of the enquiry report and the enquiry proceeding was sent to the Petitioner by way of show cause notice giving him an opportunity to make representation against the findings of the enquiry report; since the charge levelled against the Petitioner is proved and it was serious in nature, punishment warranted was dismissal from service. The Disciplinary Authority has gone through the enquiry proceeding and his past record and found that there was no extenuating circumstances to take a lenient view and lastly, the Respondents were constrained to dismiss the Petitioner from service. It is stated that in fact the Petitioner was irregular to his duties and he did not improve his attendance even after issuing charge sheet to him, and after receiving the show cause notice. It is further stated that the punishment imposed on the Petitioner is justified and legal and as such the claim petition is liable to be dismissed in limini.

4. In view of the memo filed by the Learned Counsel for the Petitioner not to challenge the validity of the domestic enquiry conducted by the Respondents, the domestic enquiry is held as legal and valid vide order dated 24.2.2009.

5. Both the parties have advanced their arguments U/s.11A of the Industrial Disputes Act, 1947 in support of their claim.

6. **In view of the above facts, the points for determination are:**

I. Whether the action of the management of M/s. Singareni Collieries Company Ltd., in imposing the punishment of dismissal from service to Sri Kumbala Ramshankar is legal and justified?

II. Whether the Petitioner is entitled for reinstatement into service?

III. If not, to what other relief the Petitioner is entitled?

7. **Point No.I:** During the course of argument, the Learned Counsel appearing on behalf of the Petitioner submitted that due to illness of his father and other family problems, the Petitioner could not be able to attend his duty sincerely. Even in his show cause the Petitioner has mentioned the above facts but it has not been considered during the course of the enquiry and on account of absenteeism capital punishment of dismissal from service was imposed on the Petitioner. When the Petitioner has taken a stand that due to his father's illness, and other family problems he could not be able to attend his duties regularly and remained absent, the authority should have considered his case while imposing capital punishment. But the authority has not considered any of the submissions of the Petitioner, and has imposed capital punishment to the Petitioner when several modes of punishment are enumerated in the company's Standing Orders.

8. On the other hand, the Learned Counsel appearing on behalf of the Respondents submitted that when the Petitioner was a chronic absentee and was found guilty of the charges levelled against him, the punishment imposed by the Respondents' company is legal and proper. When the Petitioner was not sincere in his duty and failed to maintain minimum musters in a year he is not entitled to be reinstated into service.

9. Admittedly, working in the Mines is hazardous and remaining absent is not unusual. In this case, due to ill health of his father and other family problems of the Petitioner, he could not be able to regular in his duty, remained absent in his duties and a proceeding was initiated against him for his absenteeism followed by an enquiry. In the enquiry, the charges levelled against the Petitioner were proved. For this, capital punishment was imposed. After dismissal of service, the Petitioner has become jobless and unable to provide a square meal to his family members. He has already realised his mistake and has taken shelter in the court at the age of 31 years, he is now aged about 44 years and is searching ways and means to provide bread and butter to his family members. The Petitioner being an able bodied and energetic man has already realised his mistake and is coming forward to the court at the age of 44 years to work under the Respondents. In such a circumstances, atleast one chance should be given to him for his reinstatement into service in order to save his family members. Admittedly several modes of punishment are enumerated in company's Standing Orders. The Petitioner is a first offender and has worked about two years under the Respondents. While imposing capital punishment to his employees, the management should think of the condition of the workers as well as his family members. In this case, the punishment imposed by the Respondents for dismissal of service of the Petitioner is too harsh. Therefore, it can safely be stated that the action taken by the management in imposing the punishment of dismissal from service to Sri Kumbala Ramshankar is not legal and justified.

Thus, Point No.I is answered accordingly.

10. **Point Nos. II & III:** In Point No.I, it has already been discussed that the punishment of dismissal from service to Sri Kumbala Ramshankar is not legal and justified. After dismissal of service as stated earlier, when the Petitioner has already realised his mistake and has come to the court with a prayer for reinstatement into service he should be given a chance to serve for his family members. After dismissal of service the Petitioner has become jobless and he being the sole bread earner of his family, is unable to provide a square meal to his family members. In such a circumstances atleast the Petitioner should be given a chance to maintain his livelihood and to work under the Respondents' management. But in this case, the Petitioner has not come to the court soon after his dismissal of service. In the opinion of this Tribunal the Petitioner is not entitled to get all the relief as claimed in his claim petition. But he is only entitled to be given a chance to work in the Respondents' management.

Thus, Point Nos. II & III are answered accordingly.

ORDER

Proceeding No. RKP/Per/R/008/6360 dated 13.11.2002 issued by Respondent No.1 is declared as illegal and is hereby set aside. It is ordered that the workman Sri Kumbala Ramshankar be taken into service as a fresh employee i.e., Badli filler in Cat.I, on initial basic pay without back wages and continuity of service, subject to medical fitness by the company Medical Board and the workman be kept under probation for a period of one year. The management is also directed to take an undertaking of good behaviour from the workman at the time of his posting.

The Workman can not claim for his posting in the same place, where he was last employed. The workman shall have to maintain either minimum mandatory 20 musters every month or 190 musters in a year and the management shall have the right to review the work of the workman in every three months. In the event of any short fall of attendance during the period of the three months, the service of the workman shall not be terminated and he will be cautioned to improve his performance by issuing him a warning letter. However, in the event of any shortfall of attendance during one year of service of the workman, he will be terminated from service without any further notice and enquiry and in the event of completion of one year of probation satisfactorily, the workman is to continue in service till the age of attaining superannuation. The management shall consider any forced absenteeism on account of Mine accidents/ Natural disasters, taking treatment in the company's hospital, as attendance. All other usual terms and conditions of appointment will be applicable i.e., transfer, hours of work, day of rest, holidays etc.. to the workman for appointment afresh.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 26th day of April, 2019.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the
Petitioner
NIL

Witnesses examined for the
Respondent
NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 12 जून, 2019

का.आ. 1045.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/ श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 120/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 12.06.2019 को प्राप्त हुआ था।

[सं. एल-12011/82/2005-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 12th June, 2019

S.O. 1045.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 120/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur, as shown in the Annexure, in the Industrial Dispute between the management of Punjab National Bank and their workmen which were received by the Central Government on 12.06.2019.

[No. L-12011/82/2005-IR (B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOR COURT, JABALPUR

NO. CGIT/LC/R/120/2005

Zonal Secretary,
Madhya Pradesh Bank Employees Association,
C/o State Bank of Indore,
Gorakhpur, Jabalpur

... Workman/Union

Versus

Regional Manager,
Punjab National Bank,
Regional Office, 1227, Napier Town,
Jabalpur.

... Management

AWARD

Passed on this 14th day of May 2019

As per letter dated 19-10-05 by the Government of India, Ministry of Labor, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-12011/82/2005-IR(B-II). The dispute under reference relates to:

“Whether the action of the management of Punjab National Bank in imposing the punishment of reduction in pay by two stages with cumulative effect and to treat the period remained under compulsory retirement as loss of pay on Shri Munnalal Marskole, Daftary is legal and justified? If not, to what relief the workman concerned is entitled to?”

1. After receiving reference, notices were issued to the parties. Workman filed statement of claim. It is the case of workman that he was working in the Bank during the period 9-6-96 to 23-4-98, he was issued a departmental chargesheet dated 6-8-99. Charge against the workman was that he got opened an account of Shri Devraj Soni on 15-10-97 in the Branch which was closed by the account holder on 8-12-97 after committing fraud in which workman helped the account holder. Also that the workman dislocated the teller card and account opening form and made false entries in the account. It is the case of workman that FIR was registered and disciplinary action started against him placing him on suspension on 24-4-98. He submitted his reply dated 23-8-99 which was found unsatisfactory and Disciplinary instituted a Departmental Enquiry information of which was given to workman vide letter dated 27-1-2000. After spending 24 years of unblemished service, Bank clerk committed fraud in the said account and in the accounts of other account holders by way of making false entries in the accounts regarding deposit of money in the said account. Being daftary, workman did not have opportunity to make any entry in the account or maintained the account opening and other documents. That enquiry is why the Enquiry Officer found him not guilty of any charge and exonerated from the charges in the Enquiry Report submitted by him. So far as related to the present workman, bank clerk was found guilty in the enquiry and he was awarded punishment of compulsory retirement. the Disciplinary Authority reverted the finding of Enquiry Officer and illegally held the workman guilty of misconduct which is against law because he did not have any authority or material apart from the Enquiry Report and enquiry papers to take a view against the findings recorded in the enquiry. The Disciplinary Authority relied on documents in recording the impugned finding which were not supplied to the workman during the enquiry proceedings. Thus the punishment awarded by the Disciplinary Authority amounts to victimization and unfair labor practice by the management. it is further the case of workman that he preferred an appeal before Appellate authority who *instead* of quashing the order of Disciplinary Authority, modified it by order under reference which is reduction of pay by two stages with cumulative effect treating the period of compulsory retirement as loss of pay. Also, it has been alleged that after the receipt of order of Appellate Authority, the Disciplinary Authority inflicted a further penalty in addition to order of Appellate Authority and reverted workman from post of Daftary to peon hence committed illegality. Accordingly, it has been prayed that punishment by the Appellate Authority and Disciplinary Authority be quashed and the employers be directed to provide all the consequential benefits including promotion to the workman.

2. Management filed Written Statement stating that the workman was working in the Bank during the period 9-6-96 to 23-4-98, he was issued a departmental chargesheet dated 6-8-99. Charge against the workman was that he got opened an account of Shri Devraj Soni on 15-10-97 in the Branch which was closed by the account holder on 8-12-97 after committing fraud in which workman helped the account holder. Also that the workman dislocated the teller card and account opening form and made false entries in the account. FIR was registered and disciplinary action started against him placing him on suspension on 24-4-98. He submitted his reply dated 23-8-99 which was found unsatisfactory and Disciplinary instituted a Departmental Enquiry information of which was given to workman vide letter dated 27-1-2000. It was further pleaded that the enquiry was conducted by Enquiry Officer after giving full opportunity to the workman to take part in the enquiry. He cross examined witnesses and examined his witnesses. The Enquiry Officer submitted his report dated 30-9-2000 holding the one charge which is Charge No.3 proved against the workman. Rest of the charges were held not proved by the Enquiry Officer. Enquiry Report was furnished to the workman vide letter dated 14-10-2000 and he was called upon to submit his representation. He did file his representation dated 30-11-2000 and after considering the Enquiry Report along with documents as well as the representation of the workman, Disciplinary Authority disagreed with the finding of Enquiry Officer and hold all the charges proved against the workman vide speaking order dated 28-11-2000 which was forwarded to workman to file his representation.

3. Workman filed his further representation and was given opportunity of personal hearing on 27-1-2001. He was given two other opportunities of personal hearing on 12-1-2001 & 5-2-2001 which he did not avail hence the Disciplinary Authority awarded punishment vide order dated 19-2-02 compulsorily retiring the workman from service and appeal was preferred by the workman before the Appellate Authority and after hearing the workman, the Appellate Authority converted the order of compulsory retirement into reduction of pay by two stages with cumulative effect treating the period under compulsorily retirement as loss of pay. It was further submitted by the management that all charges were proved during the enquiry and punishment awarded is not disproportionate.

4. Following additional issues were framed by my learned predecessor vide his order dated 15-4-2015:-

- (1) Whether the alleged misconduct is proved from evidence in Enquiry Proceedings?
- (2) Whether the punishment of dismissal imposed against workman is legal and proper?
- (3) If so, to what relief the workman is entitled to?

5. Both the parties were given opportunity to lead evidence on additional issues. No further evidence was adduced by any of the parties. This is also required to be mentioned here that during the course of proceedings, workman died and now his LR, his widow is pursuing the case. I have heard argument of learned counsel for for management Shri A.K.Shashi. None was present from the side of workman inspite of notice to learned counsel for the workman.

6. **Issue No.1:-**

According to management, the charge against the deceased workman was that he got opened an account of Shri Devraj Soni on 15-10-97 in Nagpur Road Jabalpur Branch of the Bank which was closed by the account holder on 8-12-97 after committing fraud with the help of the workman. Workman dislocated the teller card and account opening form, he also made false entries in the account of Account Holder. He failed to perform his routine official work. The record of the enquiry has been produced before the Court. Perusal of record reveals that according to chargesheet, the deceased workman was charged as follows:-

“Grave misconduct as per Doing any act prejudicial to the interest of the Bank or gross negligence or negligence involving or likely to involve the Bank in serious loss thereby committing Para 19.5(j) of Bipartite Agreement. Basis of this charge is as follows-

- (1) While working as Daftary in the Branch, the workman helped Devraj Soni in opening Account no. 18230 with the Bank on 15-10-97 and closing the account after committing frauds on 8-12-97.
- (2) That in order to prevent disclosure of the dislocated the teller card and account opening form of the said account.
- (3) That the workman made fake entries in the account of Devraj Soni above mentioned without any vouchers details of which are mentioned in the charge.
- (4) That the workman was instrumental in getting the amount of Rs.97636/- withdrawn from the aforesaid account on different dates mentioned in the chargesheet.
- (5) That in order to conceal the fraud committed by him, the workman got deposited Rs.1000 on 25-11-97 & 27-11-97.
- (6) That the workman failed in discharging his duty as daftary in the Branch.

The initial enquiry report dated 30-9-2000 submitted by the Enquiry Officer shows that charge No.1 was held not proved, charge No.2 not proved, charge No.3- Ist part not proved and 2nd part proved. Charge No.4 not proved, charge No.5- not proved and Charge No.6 were found proved. The Disciplinary Authority disagreed with the finding of Enquiry Officer and held Charge No.1,2,3,4 & 6 proved. He held Charge No.5 not proved. This order of the Disciplinary Authority dated 28-11-2000 is on record. The Disciplinary Authority had awarded punishment of compulsory retirement to the workman.

7. The order of Appellate Authority passed by him on 28-2-2004 on appeal filed by the workman against the order of punishment and finding recorded by the Disciplinary Authority shows that workman had introduced the account holder with the Bank in opening his account in which fraudulent entries and withdrawals were made during the course of time. He gave benefit of doubt to the workman on Charge Nos.2, 3, 4 & 5 and held these charges not proved. He further held charge No.6 proved and awarded the impugned punishment. Hence what requires to be seen here is whether all the charges have been proved or not. After close scrutiny of evidence on record, I hold that the findings of Disciplinary Authority are totally perverse with regard to proof of the charges. He has proceeded on the basic assumption that since workman was in need of money at that time, he had a motive to commit frauds. We all are in need of money, some need it for their bread, some for their luxuries. I find no occasion to disagree with the finding of Appellate Authority with regards to his finding on proof of Charge No.1 which was that the workman introduced the account holder in opening the account form but the point still remains whether it is a misconduct or not. No rule, regulation or circular has been cited before this court which prohibits an employee from introducing a person of his acquaintance with the Bank in opening his account cannot be held to be violative of any circular, rule or regulation of the Bank and accordingly it cannot be basis of any misconduct against him.

8. As regards the Charge No.3, it has been held partially proved against the workman, the Appellate Authority has recorded that on 15-10-97, when first entry for deposit of Rs.8000/- was recorded in the said account, the workman was present in the Branch. Charge No.3 w.r.t. alleged fraudulent entries in the said account relates to other various credit entries in the ledger of the said account on various dates. Charge No.3 is as follows-

आपने बचत खाता क्रमांक 18230, श्री देवराज सोनी ने विभिन्न काल्पनिक तिथियों में जाली प्रविष्टियाँ करके रु.97636/- का बैंक को नुकसान पहुँचाया/ जमा प्रविष्टियों के विरुद्ध कोई समर्थक वाउचर रिकॉर्ड में उपलब्ध नहीं है/ प्रविष्टियों का विवरण निम्नानुसार है-

क्रमांक	दिनांक	बचत खाता संख्या	राशी
1.	17.10.97 अस्पष्ट	18230	8000.00
2.	21.10.97	18230	32160.00
3.	21.10.97 अस्पष्ट क्लेअरिंग प्रतीत होता है	18230	22987.00
4. कोई विवरण नहीं	18230	34489.00
			97636.00

It does not show that any wrong credit entry was made on 15-10-97 which the Appellate Authority has held proved. Apparently it is perverse because charge itself doesnot mention any false entry on 15-10-97. Regarding other entries, Disciplinary Authority himself has held that these are not proved. This is also established that being a daftary in the Bank, the workman was not entrusted or could not be entrusted with the job of making entries in ledgers which is done by clerks in whose possession these ledger books are kept. Hence in absence of any evidence to the effect that the workman had an access to ledger books, rather it is established that ledger books and the documents in which the alleged false entries were made were in the custody of other employees. Simply on the ground that workman might have been present on such dates or two contradictory handwriting expert reports, this charge also cannot be held proved. Accordingly I hold Charge No.3 not proved on the basis of evidence produced in enquiry.

9. As regards the other charges, perusal of evidence reveals that they are not proved as it has been concluded by Appellate Authority. Hence I hold the other charges i.e. Charge No. 2, 4 & 5 not proved in enquiry. The basis of Charge No.6 is the earlier charges mentioned in Charge Nos.1 to 5. Since they have been held not proved, Charge No.6 is also held not proved. Issue No.1 is decided accordingly.

10. Issue No.2 & 3-

On the basis of finding recorded earlier, I hold that the impugned punishment awarded to the workman is bad in law and fact and workman is held entitled to the consequential benefits setting aside the impugned punishment. Issue No.2 & 3 are answered accordingly.

11. In the result, award is passed as under:-

(1) **The action of the management of Punjab National Bank in imposing the punishment of reduction in pay by two stages with cumulative effect and to treat the period remained under compulsory retirement as loss of pay on Shri Munnalal Marskole, Daftary(now deceased) is held illegal and unjustified.**

(2) **Workman is entitled to all the consequential benefits.**

12. Let the copies of the award be sent to the Government of India, Ministry of Labor & Employment as per rules.

Dated:14.5.2019

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 12 जून, 2019

का.आ. 1046.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इलाहाबाद बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/ श्रम न्यायालय, कानपुर (उ. प्र.) के पंचाट (संदर्भ संख्या 78/2017) को प्रकाशित करती है जो केन्द्रीय सरकार को 12.06.2019 को प्राप्त हुआ था।

[सं. एल-12011/45/2017-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 12th June, 2019

S.O. 1046.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 78/2017) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur (U.P.), as shown in the Annexure, in the Industrial Dispute between the management of Allahabad Bank and their workmen which were received by the Central Government on 12.06.2019.

[No. L-12011/45/2017-IR (B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE SRI RAKESH KUMAR, HJS, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOR COURT, KANPUR

Industrial Dispute No. 78 of 2017

Between:-

Allahabad Bank Staff Association (UP),
Allahabad Bank,
Hazaratganj Branch,
Lucknow.

AND

The Deputy General Manager,
Allahabad Bank,
Mandaliya Karyalay,
1/142, Babu Gulab Rai Marg,
Agra- 282005.

AWARD

1. Central Government, Mol & Employment, New Delhi vide notification No.L-12011/45/2017-IR (B-II), dated 02.11.2017, has referred the following dispute for adjudication to this tribunal-

“Whether the action of the management of the Divisional Office, Allahabad Bank, Agra in awarding punishment on Sri Satish Kumar Verma of “Be brought to down to two lower stage in the scale of pay by two stages” is legal and justified? If not, to what relief the workman is entitled?”

2. After receipt of reference order from the Ministry, registered notices dated 23.11.2017 and 30.01.2019 were issued from the tribunal directing the Association to file claim petition supported with relevant documentary evidence by fixing dates for hearing of the case i.e., 22.12.17, 09.02.18, 17.04.2018, 19.06.2018, 07.08.2018, 09.10.2018, 14.11.2018, 02.01.2019, 24.01.2019, 19.03.2019, 25.03.2019 and on 08.04.2019, but strange enough to note that on none of the dates fixed in the case neither any representative of the Association raising the present dispute appeared in the case nor any claim petition was filed in the case.

3. On behalf of the management Sri Sharad Shukla and others have filed their authority letter to represent the management in the case.

4. By a bare perusal of the records, it is evident that the Association raising the present dispute on behalf of the workman, despite availing of sufficient and reasonable opportunities have palpably failed in discharging its obligation in filing the claim petition in support of its case, therefore, it is abundantly clear that neither the Association nor the workman is interested in prosecuting the present case.

5. Therefore, under the facts and circumstances, the case is adjudicated against the Union / Association holding that the Association/workman is not entitled for any relief for want of pleadings and proof.

6. Award in the present case is as above.

RAKESH KUMAR, Presiding Officer

Date : 06.05.2019

नई दिल्ली, 12 जून, 2019

का.आ. 1047.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार फाइव स्टार शिपिंग एजेंसी प्रा. लि. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/ श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ संख्या 01/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 12.06.2019 को प्राप्त हुआ था।

[सं. एल-32011/03/2015-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 12th June, 2019

S.O. 1047.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 01/2016) of the Central Government Industrial Tribunal-cum-Labour Court Kolkata, as shown in the Annexure, in the Industrial Dispute between the management of Five Star Shipping Agency Pvt. Ltd., and their workmen which were received by the Central Government on 12.06.2019.

[No. L-32011/03/2015-IR (B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 01 of 2016

Parties: Employers in relation to the management of Five Star Shipping Agency Pvt. Ltd.

AND

Their workmen

Present: Justice Ravindra Nath Mishra, Presiding Officer

Appearance:

On behalf of the Management : None .

On behalf of the Workmen : None

Dated: 4th June, 2019

Industry: Port & Dock

AWARD

By Order No.L-32011/03/2015-IR(B-II) dated 17.12.2015 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) referred the following dispute to this Tribunal for adjudication:

“Whether the action of the management of Five Star Shipping Agency Pvt. Ltd. terminating the service of Shri Akbar Mallick, Mazdoor without adhering the section 25F(a) & (b) under ID Act, 1947 is legal/or justified? If not, what relief the workmen are entitled?”

2. When the case is taken up for hearing on 08.04.2019, none appeared for the parties concerned. It transpires from record that though this reference is pending in this Tribunal since 08.01.2016 and inspite of all the opportunities, neither the union has not filed its statement of claim, nor the management has filed its written statement to proceed further with the case.

3. On consideration of the facts and circumstances of the case, it appears that the union has no grievance at present in respect of termination of the workman concerned as mentioned in the order of reference. Therefore, there exists no dispute for adjudication.

4. Therefore, the reference is disposed of accordingly.

JUSTICE RAVINDRA NATH MISHRA, Presiding Officer

Dated, Kolkata,
The 4th June, 2019

नई दिल्ली, 13 जून, 2019

का.आ. 1048.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार केनरा बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/ श्रम न्यायालय, बंगलोर के पंचाट (संदर्भ संख्या 15/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 13.06.2019 को प्राप्त हुआ था।

[सं. एल-12012/141/2005-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 13th June, 2019

S.O. 1048.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 15/2006) of the Central Government Industrial Tribunal-cum-Labour Court Bangalore, as shown in the Annexure, in the Industrial Dispute between the management of Canara Bank and their workmen which were received by the Central Government on 13.06.2019.

[No. L-12012/141/2005-IR (B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
BANGALORE**DATED : 03RD JUNE 2019**PRESENT** : Justice Smt. Rathnakala, Presiding Officer**CR 15/2006**

<u>I Party</u>	<u>II Party</u>
Sh. B. M. Ramaiah, S/o Late Muniswamappa, Since deceased by his LR's: 1. Smt. Shantha, W/o Late B. M. Ramaiah, 2. Sh. Prathip Kumar B.R., S/o Late B. M. Ramaiah, 3. Ms. Swetha B.R., D/o Late B. M. Ramaiah,	The General Manager (P), Canara Bank, Head Office, (Personnel Wing) 112, J.C. Road, Bangalore – 560 002.

Address of I Party LR's

All are residing at
No. 11, 18th Cross, Lalji Nagar,
Lakkasandra Extension,
Bangalore – 560 030

Appearance

Advocate for I Party : Mr. Muralidhara

Advocate for II Party : Mr. T.R.K. Prasad

AWARD

The Central Government vide Order No.L-12012/141/2005-IR(B-II) dated 17.04.2006 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

“Whether the action of Management of Canara Bank in passing the order of compulsory retirement from the services of the Bank on Shri B.M. Ramaiah, Clerk, Bommasandra Branch, Canara Bank w.e.f 10.12.2003 is legal and justified? If not, to what relief the workman is entitled and from which date?”

1. The 1st Party workman has raised the dispute against his employer 2nd Party Management. He joined the service of the 2nd Party as a Clerk in the year 1978; his service was confirmed, he is an Ex-Service Man from the army and was honoured with Sainya Seva Medal and Colour Service Medal; he was serving at Bommasandra Branch, Bangalore; he was issued with a charge sheet dated 28.11.2002 alleging that he fraudulently retained Rs. 9,000/- out of the amount remitted by a Customer and temporarily misappropriating the amount for personal benefit. Enquiry was initiated, he participated in the enquiry; Enquiry Officer held him guilty of the misconduct. The Disciplinary Authority after calling for his remarks to the Enquiry Report ordered his Compulsory Retirement under Chapter XI Regulations 4 Clause (b) of Canara Bank Service Code. The appeal against the punishment order did not survive.

2. The 1st Party in his claim petition contends that 17.08.2002 being a Saturday, and an half day for Banking Transactions; he attended the Branch a little bit late with due permission from the Superior over phone. He was asked to do cash work instead of his routine work, he came late to the Branch, the Manager himself was handling the cash department, he hesitated to continue the work, but the Manager forced him to continue cash work in the large interest of the public. He requested the Manager to tally the correctness of his cash work and handover the net cash balances with the entries for further continuation of the cash work, but the Manager insisted to carry the cash work without going to normal procedural formalities of tallying. Finally the 1st Party continued the remaining cash work. It was a heavy rush day and he handled around 250 cash transactions, the cash was successfully handled and tallied, he handed over the same to the cash supervisor for checking and attestation, he had to attend the court on 19.08.2002 and had requested for 4 days leave from 19th onwards. But he was called to the Branch on 20.08.2002 saying that his presence is required urgently due to some problem crept in on 17.08.2002. He cancelled his leave on 22.08.2002 and rushed to his Branch, he was informed that a Customer by name Sh. Devaraju had complained that he had remitted Rs. 10,000/- to his S.B. Account on 17.08.2002 whereas the entry in the pass book shows Rs. 1,000/-. The customer was about to start agitation and the Manager pleaded with him to wait for 3 days and received the complaint. Though, the whole Branch was involved to investigate the transaction, they could not find out the whereabouts of the shortfall. At the instance of the Manager 1st Party remitted the shortfall amount to save the name of the Bank. The Manager reported the whole episode to the Administrative Section; said Manager was not in cordial terms with the 1st Party, the Investigating Officer investigated the matter routinely. The Charge Sheet was fraught with infirmities, the findings of the Enquiry Officer were perverse, the Enquiry Officer was biased and prejudiced against the 1st Party workman. When he was imposed penalty of Compulsory Retirement from service he was left with 4 years of service and large liability. Aggrieved by the illegal action of the 2nd Party, he caused a legal notice dated 01.01.2005 to the 2nd Party seeking for grounds to take such a severe action of punishment equivalent to be imposed on the charges of major misconduct. He is not guilty of the alleged charges; the punishment is too harsh and disproportionate to the gravity of the misconduct alleged.

3. The 2nd Party in their counter statement justified their action, it is stated that the complainant had S.B Account No. 10269 at 2nd Party's Bommasandra Branch; on 19.08.2002 on getting entry into his pass book reported to the Manager that he had remitted Rs. 10,000/- to his S.B Account on 17.08.2002 but the entry in the pass book is Rs. 1,000/- only. During the investigation it was found that Sh. Devaraju had remitted Rs. 10,000/- himself along with the credit challan prepared through a friend. The denominations are Rs. 500 x 10 = 5,000/- and Rs. 100 x 50 = 5,000/- amount being Rs. 10,000/-. The 1st Party workman had not reported any excess cash on that day. He was on leave from 19.08.2002 to 21.08.2002 and reported to duty on 22.08.2002. After searching for the challan the 1st Party told the Manager that the challan is missing, he sought time till 26.08.2002 to verify the details of the transaction and settled the matter. On 26.08.2002 he discounted a cheque of Rs. 12,000/- and remitted Rs. 9,000/- to the S.B Account of Sh. Devaraju. Though the customer had remitted the cash at 12.00 noon on 17.08.2002, the relevant entry in the manual cash shroff is shown as the last entry at Sl. No. 89. The transaction is recorded in the system as transaction No. 223, the last transaction was No. 272, he has unauthorisedly removed Branch portion of the challan. Though, he has remitted Rs. 9,000/- to the S.B Account 10269 on 17.08.2002, he temporarily misappropriated the same for his personal needs. He had not submitted his reply to the charge sheet. His allegation against the Manager has no relevance to the issue and it is his own unfounded imagination. Likewise his allegations against the finding of enquiry are not tenable; his legal notice was suitably replied by the 2nd Party.

4. It is from the Charge sheet that the 1st Party was alleged with gross misconduct within the meaning of Chapter XI Regulations 4 Clause (b) of Canara Bank Service Code.

5. On the rival pleadings of the parties an issue regarding fairness of the Domestic Enquiry was framed, tried and adjudicated upholding the fairness of the Domestic Enquiry.

6. Thereafter the 1st Party adduced evidence on the contention victimization and unemployment. On giving audience to both parties on merits of the case, the matter was reserved for award, at that stage 1st Party expired and his Legal Heirs are brought on record.

7. During the enquiry, on behalf of the Management five witnesses were examined, the Complainant was the first witness, the Investigating Officer was the fourth witness and the remaining were the Manager and staff of the Branch, 20 documents were exhibited for the Management. Though the CSE did not opt to adduce oral evidence 4 documents submitted for defence were taken on record as Ex D-1 to Ex D-4.

8. The crucial question before the Enquiry Officer was, what amount had the S.B Account Holder remitted to his account; the Complainant during his deposition had stated about remitting Rs. 10,000/- to his account with the credit challan filled by the younger brother of his friend and he has seen that the denominations were written on it, and he produced the Xerox copy of Counterfoil of his challan in which it was written Rs. 10,000/- in words and Rs. 1,000/- in figures. Undisputably that the 1st Party was the cashier on that day and had mentioned Rs. 1,000/- in the Manual Shroff book. The 1st Party had not disputed the photo copy of Counterfoil produced by the Complainant bearing his signature. The office challan was not produced during the enquiry by the prosecution. However, the Special Assistant had stated that he had seen the original challan in question while checking the entry and the amount was written in figures as Rs. 1,000/- and could not recollect the amount written in words. However, everybody agreed that there was not excess cash on that day. The Investigating Officer also could not trace the original challan during his investigation. The cash receipt waste dated 17.08.2002 depicted the amount credited to the S.B Account 10269 was Rs. 1,000/- vide receipt Sl. No. 89 and the entry was made by the 1st Party. The Enquiry Officer conveniently skipped the gap between the fact that the Special Assistant on that day had seen the original office challan and thereafter it was missing, but proceeded on the photo copy of Counterfoil challan, more specifically on the description of amount written in words as Ten Thousand. By assuming that what was written on the Counterfoil should have been reflected in the main challan; he relied on the evidence of the Complainant and also the view of the Investigating Officer that he had remitted the cash in the denominations of $500 \times 10 = 5000$ and $100 \times 50 = 5000$. As such there was no dispute to the fact that the 1st Party subsequently had remitted Rs. 9,000/- to the Account of the Customer. Thus, the Enquiry Officer reached the finding that the 1st Party had retained Rs. 9,000/- out of the amount remitted by the Customer and has mis-utilised the same.

9. Reading the Enquiry Report in juxtaposition to the evidence would surface that 1st Party was not a regular cashier, he came little late to the Branch on that day, on the order of the Manager had to take up cash work, that being a Saturday there was heavy transaction, the Complainant was unable to speak and write English, hence had to get the challan filled up by a 3rd person and the author of the challan was not examined as a witness. The Complainant had not ascertained on 17.08.2002 with others about what was written in the challan after verifying the entry in the pass book on 21.08.2002 he returned only on 26.08.2002. Suspicion against the 1st Party was he must have intentionally destroyed the Bank challan, but the Enquiry Officer failed to take note of the fact that Special Assistant had seen the original challan, once the original challan goes to the Accountant it is he who bundles it and it is not palatable to assume that 1st Party working in the cash counter gets occasion to take the challan to his custody so as to destroy the evidence. The Enquiry Officer emphasized on the fact that the 1st Party having made good of shortfall of the cash, admitted the temporary misappropriation.

10. The Manager during the cross examination had admitted that the 1st Party workman is a Hard Worker, his customer service is excellent, he had no doubt about his Honesty and Integrity till the incident, his dedication towards the institution was excellent he worked for long hours and alone balanced the ledger, he had helped for recovery of loans, deposit, mobilization etc. It was he who told the 1st Party that the matter is to be settled, the 1st Party remitted Rs. 9,000/-. When the customer complained on 19.08.2002 itself it was noticed that the office challan was missing, at the relevant time the computerization work was going on in full swing, there was lot of work pending in respect of slip bundles, the cash receipt waste was maintained both manually as well as on the computer simultaneously. Said work was done by other official assisting the cashier, the customer was a vegetable vendor, it was a normal S.B Account without big deposits.

11. It is also worth to note that the Complainant who is unable to answer whether in the Counterfoil challan bears the figures of the amount deposited was written, gives the specific denominations of the currency notes he deposited on that day. During the cross-examination of the Investigating Officer who recorded the statement of the Complainant that he had read the figure mentioned as Rs. 1,000/- in the Counterfoil as Rs. 10,000/-. The fact that the entry of the transaction in the Manual Shroff Book was done as last entry at Sl. No. 89 but in the system it was the last transaction bearing No. 272 does not have any significance since on Saturday Bank transaction is only far half day.

12. The more interesting fact about the story is the Complainant had not produced the original Counterfoil challan either before the Investigating Officer or before the Enquiry Officer. Commencing from the stage of actual remittance of the amount in the cash counter there are gaps disconnecting the events. The Enquiry Officer has reached the conclusion on the Principle of Preponderance of Probability, but failed to note that once the amount is received the Office challan was sent for bundling, the original challan was seen by the Official while bundling; the 1st Party had no occasion to lay his hand on the challan. The 1st Party reasoned out by producing a letter issued by his Counsel that the 1st Party attended the Court on 19.08.2002, his absence on the subsequent days was with the leave of the Manager to attend the Court hearing, there was no discrepancy between the manual entry and the computer entry. There was a discrepancy in the version of the depositor. He says that he cannot read the writing in the challan, but would read from figures mentioned as Rs. 1,000/- as Rs. 10,000/-. There appears to be something unnatural on the part of the Complainant in not producing his original Counterfoil Challan. Wherefore in the opinion of this Tribunal holding the 1st Party guilty of the misconduct only on the basis of the Xerox copy of the Counterfoil challan was not well founded.

13. The Disciplinary Authority owe its obligation to re-read the evidence, interpret the allegation in relation to Past Records of CSE. The 1st Party being an Ex-Service Man from the Army having maintained good record, it is not in a natural course to presume that he would steal a depositor's money without forethought of such conduct. Not only the Enquiry Report which is founded on the fragile evidence is perverse, but also the punishment order imposed on the workman, relying on such fragile Enquiry Report was not legal and not justified. The Mere fact that on the persuasion of his Manager he deposited the shortfall, shall not subscribe for the allegation against him. In view of the punishment order the workman lost 4 years of his valuable service. Since the punishment order is held not legal, the monetary loss suffered by him the ignominy and the sufferings of the workman and the family have to be compensated by awarding Monetary Relief.

AWARD

The reference is accepted. The Action of the 2nd Party in passing the order of Compulsory Retirement from service against their employee Sh. B.M. Ramaiah is not legal and not justified. The class one Legal Heirs of the deceased workman shall be paid 60% of his Back wages i.e. w.e.f. 10.12.2003 till the date of superannuation of the workman within 60 days from the date of publication of the Award, failing which the amount shall bear future interest at the rate of 8% per annum.

(Dictated, transcribed, corrected and signed by me on 03rd June, 2019)

JUSTICE SMT. RATHNAKALA, Presiding Officer

नई दिल्ली, 13 जून, 2019

का.आ. 1049.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार केनरा बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/ श्रम न्यायालय, बंगलोर के पंचाट (संदर्भ संख्या 140/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 13.06.2019 को प्राप्त हुआ था।

[सं. एल-12012/75/2007-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 13th June, 2019

S.O. 1049.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 140/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore, as shown in the Annexure, in the Industrial Dispute between the management of Canara Bank and their workmen which were received by the Central Government on 13.06.2019.

[No. L-12012/75/2007-IR (B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE
BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
BANGALORE

DATED : 04TH JUNE 2019

PRESENT : Justice Smt. Rathnakala, Presiding Officer

CR 140/2007

<u>I Party</u>	<u>II Party</u>
Shri. D. H. Sreenivasa, No. 461, Kumar Building, Arisinakunte, Adarshanagar, Nelamangala, Uttara taluk.	The General Manager (P), Canara Bank, 112, J.C. Road, Bangalore – 560001.

Appearance

Advocate for I Party : Mr. K.V. Sathyanarayana

Advocate for II Party : Mr. T.R.K. Prasad

AWARD

The Central Government vide Order No.L-12012/75/2007-IR(B-II) dated 01.10.2007 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

“Whether the action of the Management of Canara Bank in imposition of punishment of dismissal from the services on the workman, Shri D.H. Srinivasa, Ex-sub-Staff, Canara Bank, Levelle Road, Branch, Bangalore w.e.f. 21.06.2003 is legal and justified? If not, to what relief the workman is entitled and from which date?”

1. The undisputed facts of the case is, the 1st Party workman was appointed as daily wager sub-staff in the 2nd Party Management during 1984. Subsequently his service was regularised as permanent employee. He was kept under suspension, followed by the charge sheet dated 25.04.2002. Domestic Enquiry was initiated by appointing Enquiry Officer and Presenting Officer. On the very same set of facts, the Jurisdictional Police had launched Criminal Case and had charge sheeted him along with the co-accused for the offence under section 489-B, 489-C and 420 of IPC. The 1st Party did not participate in the enquiry though had engaged Defence representative. After recording the statements of Management witnesses the Enquiry Officer recorded his findings, holding the CSE guilty of all the charges. Acting on the enquiry report the Disciplinary Authority has dismissed him from service.

2. The Pith of the allegation against the 1st Party was, on 25.04.2002 he introduced one Sh. Sathyanarayana to the Clerk of the Branch, persuaded him to exchange the currency notes of Rs. 500/- denomination totally amounting to Rs. 1,00,000/-, for the currency notes of Rs. 100/- and Rs. 50/-. Though the Official Sh. B. P. Nath advised the 1st Party to go to RBI, for exchange of notes, he prevailed on him and got the notes exchanged. In the evening the Cashier found that all the Rs. 500/- denomination currency notes were fake. However, on the same evening at the intervention of the 1st Party the original currency notes of the Bank were returned. 1st Party had indulged in the above transaction, being lured by Sh. Sathyanarayana of a commission of Rs. 6,000/-

3. The 1st Party in his claim has assailed the procedure of enquiry adopted by Enquiry Officer as illegal and also lack of opportunity to defend himself against the charges. His further case is the punishment is most disproportionate to gravity of the alleged misconduct.

The 2nd Party in their counter statement justified the legality of the procedure adopted during the Domestic Enquiry and denied all the allegation levelled by the 1st Party in his claim statement. It is further contended that Enquiry Officer has given the detailed findings. Disciplinary Authority gave every opportunity to the 1st Party to make submission on the Enquiry findings and arranged personal hearing on proposed punishment. It is contended that the punishment commensurates with the gravity of misconduct proved during the Enquiry. Punishment Order is passed by the Disciplinary Authority considering the records of the Enquiry, nature and gravity of the proved misconduct and facts and circumstances of the case.

4. On the rival pleadings of the parties regarding validity and fairness of Domestic Enquiry a preliminary issue was framed, tried and adjudicated by upholding the fairness of the Domestic Enquiry.

5. The 1st Party workman led his evidence to demonstrate that he is victimised by the 2nd Party for his legitimate trade union activity. He along with his family members is suffering from mental agony, having no other alternative means of livelihood.

6. Written Argument is submitted by the 1st Party workman. The learned counsel for the 2nd Party has submitted his oral argument.

7. It was allegation against the 1st Party workman as per charge sheet was:-

By his action of abetting and instigating an outsider to get fake currency notes exchanged, he committed gross misconduct within the meaning of Chapter XI Regulation 3, Clause (n) CBSE.

He attempted to cause wilful damage to the property of the Bank, thus committed gross misconduct within the meaning of Chapter XI regulation 3 Clause (j) of Canara Bank Service Code.

He acted without Honesty and integrity and thereby contravened Regulation 2A (l) XI Chapter 9 of Canara Bank Service Code.

His action being prejudicial to the interest of the Bank, he has committed gross misconduct within the meaning of Chapter XI, Regulation 3, Clause (m) of Canara Bank Service Code.

8. During the enquiry the Management examined five witnesses and marked 15 documents. The witnesses examined were all Official witnesses - the then Chief Manager of the Branch, the Clerk who was the Cashier on 08.02.2001 the Investigating Officer, Official from the Branch Sh. B P Nath who was persuaded by the 1st Party to hand over genuine currency notes in exchange for fake currency notes and the Official looking after the Disciplinary matter working at SSW CO Bangalore. The 1st Party though aware of the enquiry abstained from cross examining the Management witnesses and presented his Defence Evidence.

9. The Enquiry Officer without other go considered the uncontroverted oral and documentary evidence placed by the Management to reach his conclusion. Among other things the vital documentary evidence (Ex MEX-10) was, statement given by the 1st Party before the Investigating Officer in the criminal case confessing that Sh. Sathyanarayana has promised him to give Rs. 6,000/- commission for exchange of the currency notes. Ex MEX-9 was the letter addressed by the Jurisdictional Police to the Manager of the Branch stating that during the investigation the 1st Party workman's complicity in the offence was revealed and he is arrested. EX MEX-12 were the Bank Cheques issued by the CSE to Sh. Sathyanarayana evincing the financial dealings with him; Ex MEX-10 was the statement given by the CSE to the Investigating Officer.

10. Appreciating the oral and documentary evidence the Enquiry Officer found the workman guilty of all the charges. It is evident from the Enquiry Records that the workman was insisting to stay the enquiry on the ground that the criminal case is in progress. It appears he had approached the Hon'ble High Court for the relief of stay of the Enquiry proceedings on the said ground, possibly without any benefit. He has produced the judgement dated 31.07.2006 passed by the Special Court in the session case No. 94/2002 acquitting him of all the charges. The seized counterfeit notes are ordered to be confiscated and returned to RBI for destruction.

11. Much of the facts alleged in the charge sheet are not in dispute and the evidence produced by the prosecution during enquiry, since went uncontroverted no impropriety or illegality can be attributed against the enquiry report. As such it was an effort to defraud the Bank by Rs. 1,00,000/-. The position of Law is very much firm that the result of the criminal case has no bearing on the Domestic Enquiry or the consequences thereof. The Disciplinary Authority acting on the Enquiry Report imposed the punishment order, after giving him an opportunity for personal hearing. At that stage also the 1st Party was adamant and did not attend the personal hearing and sought to stop the Disciplinary Proceedings until disposal of the session's case. For not availing the opportunity at the crucial point of time, in the natural course he was imposed the punishment order of dismissal.

12. The short question now left open is, whether the punishment commensurate with the gravity of the misconduct proved?

13. As such the Bank did not suffer any loss due to the misconduct alleged. It appears till the present incident his service records were clean. There was no tangible material before the Enquiry Officer to assume that he had involved in the misconduct for personal gain of Rs. 6,000/-. Even the Police have not recovered the commission amount promised by the accused from him custody. It is also possible that the whole episode occurred under blind belief. The statement given by the accused before the Investigating Officer is not legal evidence and hit by section 26 of the Evidence Act and also section 161 of CRPC. Off course criminal Jurisprudence and Industrial Jurisprudence operate in different spheres. If the confession statement Ex MEX-10 is taken out, the gravity of the misconduct mitigates substantially. Looking from that angle the punishment of dismissal imposed in the mid-way of his service without regard to his past record is too harsh and shockingly disproportionate.

14. From the records I assume that he is already crossed the age of superannuation. In the given circumstance, in the considered opinion of this Tribunal modification of punishment order of dismissal into termination with all monetary benefits available to the years of service rendered by him to the Bank, would serve ends of justice being met.

AWARD

The reference is accepted. The punishment of dismissal imposed on the 1st Party workman Sh. D H Srinivasa, Ex-Sub-Staff Canara Bank, Levelle Road Branch, Bangalore w.e.f 21.06.2003 by the Management of Canara Bank is neither legal nor justified. The punishment order of dismissal is modified to the order of termination w.e.f 21.06.2003 along with all terminal monetary benefits in respect of the years of his service that is 16.11.1984 to 21.06.2003, shall be paid to him within 60 days of publication of this award in the official gazette. Otherwise the amount shall carry future interest at the rate of 8% per annum till the date of recovery.

(Dictated, transcribed, corrected and signed by me on 04th June, 2019)

JUSTICE SMT. RATHNAKALA, Presiding Officer

नई दिल्ली, 13 जून, 2019

का.आ. 1050.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक आफ महाराष्ट्र के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/ श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 03/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 13.06.2019 को प्राप्त हुआ था।

[सं. एल-12011/09/2015-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 13th June, 2019

S.O. 1050.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 03/2015) of the Central Government Industrial Tribunal-cum-Labour Court Nagpur, as shown in the Annexure, in the Industrial Dispute between the management of Bank of Maharashtra and their workmen which were received by the Central Government on 13.06.2019.

[No. L-12011/09/2015-IR (B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE SHRI S.S. GARG, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No.CGIT/NGP/03/2015-16

Date: 08.05.2019

Party No.1 : The Assistant General Manager,
Bank of Maharashtra, Zonal Office,
Mahabank Bhavan, Sitabuldi,
Nagpur – 440012.

Versus

Party No.2 : The General Secretary,
Union of the Maharashtra Bank Employees,
Ram Naresh Bhavan, 542, Congress Nagar,
Nagpur – 440012.

AWARD(Dated: 08th May 2019)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Bank of Maharashtra and their union, Maharashtra Bank Employees Union for adjudication, as per letter No.L-12011/09/2015 (IR (B-II) dated 27.04.2015, with the following schedule:-

"Whether the action of the management of Bank of Maharashtra, Nagpur in imposing the punishment of bringing down to lower stage in the scale of pay by two stages for one year without cumulative effect vide order dated 30.07.2011 and also punishment of recovery of Rs. 40,000/- from the salary of the workman vide order dated 06.08.2011, are just, fair & legal? If not, to what relief the concerned workman is entitled to?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement, by registered post with acknowledge due fixing the date on 28.08.2015. On 08.10.2015, Shri S.T. Sahasrabudhe, advocate filed vakalatnama for the petitioner and on 09.11.2017, Shri R.N. Sen, advocate filed vakalatnama on behalf of the management. After that, this Tribunal also issued notice to the petitioner on 09.11.2017 and 21.09.2018, but neither petitioner /union nor his advocate appeared even service of the notice. Last notice was issued on 21.09.2018 through registered post. This office supplied photocopy of Dispatch Register, which shows that, presumption may be drawn against the petitioner/union for service of the notice.

3. Advocate for the management filed an application for closing the reference on 10.08.2018, which is marked as I.A. No. I and gave details of the proceedings, which shows that, petitioner/union is not interested to continue with this reference. So, application I.A. No. I is allowed. Hence it is ordered:

ORDER

The reference is answered in the negative and against the petitioner. The petitioner is not entitled to any relief.

S.S. GARG, Presiding Officer

नई दिल्ली, 13 जून, 2019

का.आ. 1051.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार केनरा बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/ श्रम न्यायालय, बंगलोर के पंचाट (संदर्भ संख्या 139/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 13.06.2019 को प्राप्त हुआ था।

[सं. एल-12012/74/2007-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 13th June, 2019

S.O. 1051.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 139/2007) of the Central Government Industrial Tribunal-cum-Labour Court Bangalore, as shown in the Annexure, in the Industrial Dispute between the management of Canara Bank and their workmen, received by the Central Government on 13.06.2019.

[No. L-12012/74/2007-IR (B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIUBNAL-CUM-LABOUR COURT,
BANGALORE – 560 022DATED : 06TH JUNE 2019

PRESENT : Justice Smt. Rathnakala, Presiding Officer

CR 139/2007

<u>I Party</u>	<u>II Party</u>
Sh. N Govindaraju, S/o Sh. Nagaraju, No. 34/35, 2 nd Floor, 12 th Main Road, 5 th Cross, Near Vijayanagar Police Station, Bangalore - 560 040.	The Dy. General Manager, Canara Bank, Circle Office, No. 86, III Floor, Spencer Towers, M.G Road, Bangalore - 560 001.

Appearance

Advocate for I Party : Mr. K.V. Sathyanarayana

Advocate for II Party : Mr. T.R.K. Prasad

AWARD

The Central Government vide Order No.L-12012/74/2007-IR(B-II) dated 27.09.2007 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

“Whether the action of the management of Canara Bank in imposition of punishment of compulsory retirement from the services on the workman Sh. N. Govindaraju, Ex-Clerk, Canara Bank, V.G. Doddi Branch w.e.f. 30.12.2005 is legal and justified? If not, to what relief he is entitled and from which date?”

1. The undisputed facts are,

The 1st Party workman joined the service of the 2nd Party Bank as Sub-Staff in the year 1977. He was promoted as Clerk during 1996 and was posted to V.G. Doddi, Magadi Taluk, Bangalore Rural District without importing training for the Promoted Post. He was kept under suspension on certain allegations and the Charge Sheet dated 28.04.2005 followed. He denied the charges; Domestic Enquiry was initiated by appointing Enquiry Officer. After holding a full fledged enquiry the Enquiry Officer submitted his report, holding the 1st Party guilty of the misconduct alleged. The Disciplinary Authority called for the remarks of the 1st Party to the Enquiry Report, gave its audience him and imposed the punishment of 'Compulsory retirement' from service w.e.f. 30.12.2005. The Appeal preferred thereon was of no benefit.

2. The 1st Party claims that the Enquiry was held in violation of Principle of Natural Justice. The finding of the Enquiry Officer was perverse. The Disciplinary Authority mechanically accepted the perverse findings and endorsed the defective Enquiry. The Punishment imposed is most disproportionate to the gravity of the alleged charges; the punishment order is illegal and capricious. He had filed the Appeal before the Appellate Authority by urging various valid and tenable grounds. But the Appellate Authority without considering the facts and circumstances of the case and evidences has rejected the appeal with a closed mind. He was a member of the Union Viz Federation of Canara Bank Employees Congress Affiliated to BEF and INTUC; he was taking active role in the Union and fighting for better service conditions of the Employees. Hence, the Management developed Hostile attitude against him and victimised him. Due to the illegal and arbitrary action of the Management he and his family members are facing financial hardship and mental agony.

3. The 2nd Party countered the claim, contending that the enquiry is conducted by duly following the Principles of Natural Justice and as per the provisions of Canara Bank Service Code which is in conformity with the Bipartite Settlements and Awards. He was given fair and reasonable opportunity during the enquiry. The finding of the Enquiry Officer is well supported by the evidence and cogent reasons. He was cautioned several times for his financial indiscipline. The Disciplinary Authority imposed the punishment on considering his submissions during the personal hearings, relevant records and the gravity of misconduct. The misconduct committed by him was tampering of the Bank records, raising of funds for personal gain, the punishment imposed commensurates with the gravity of the misconduct.

Appropriate punishments are imposed on the other concerned employees as per the gravity of offence committed by them. Accordingly Sh. R R Hoover/the Manager of the Branch was imposed punishment of Compulsory Retirement for the misconduct committed by him, as per the rules and regulations applicable to the category of Officers.

4. On the rival pleadings regarding the validity of the Domestic Enquiry, Preliminary Issue was framed, tried and adjudicated by upholding the validity of Domestic Enquiry. The 1st Party thereafter adduced evidence to reiterate that because of his trade Union activities he is victimised.

5. Written argument is submitted by the 1st Party. Learned Counsel for the 2nd Party advanced his oral argument.

6. The 1st Party was charge sheeted on two counts. The gist of the allegation was that while working at V.G. Doddhi Branch from 23.10.1996 to 16.08.2004 he indulged in causing serious discrepancies.....in the advances portfolio..... The charge sheet runs into several pages, However to epitomize the same :-

CHARGE - I

- i) On 29.04.2000 the then Manager of the branch Sh. R R Hoover discounted CDB 22/2000 a cheque bearing No. 537561 dated 31.03.2000 for Rs. 86,410 drawn on State Bank of Mysore, Ramanagaram. The cheque was discounted to S.B A/c No. 1901 of Sh. Ramaiah though the cheque was non-existent, Rs. 85,711/- was credited to S.B A/c No. 1901 on 29.04.2000 and Rs. 699/- was credited to interest collected/commission account; Rs. 85,700.00 was withdrawn on 29.04.2000 through a withdrawal slip, the signature on the slips do not tally with the signature on account opening form.

The ledger sheet having balance of Rs. 955/- is torn vertically and carried over to new sheet in the hand writing of the 1st Party, as if it was carried over on 14.02.2000 though the balance on 14.02.2000 was Rs. 955/- the carried over figure in new sheet is Rs. 966/-. That is the balance as on 29.04.2000; several adjustments are made to camouflage the difference of Rs. 11/- by fabricating new ledger sheets; Sh. R R Hoveer has prepared the slips pertaining to the transaction. This CDB is clear by way of fictitious entry, IBA 717 dated 01.05.2000 adjusted on 07.05.2000. As per the waste sheet and slip bundle CDB was actually adjusted on 22.05.2000 as below.

Dr. Cash : Rs. 59,100/-

Cr. SB 1901 : Rs. 59,100/- remitted to the cash SB 1901

Dr. VSL AG : Rs. 30,000/-

Cr. SB 1901 : Rs. 27,310/- of Sh. D Ramaiah

Cr.SB 1450 : Rs. 2690/- of Sh. L. Narayana - subsequently the amount recovered from SB 1901

No such VSL account is available; entry is not made in VSL subsidiary; the security for the loan of Rs. 30,000/- is not known. Sh. R R Hoover in his statement dated 25.06.2004 admitted that it is a fictitious transaction..... the 1st party signed the withdrawal slip of SB 1901 of Sh. Ramaiah.

- ii) A fictitious loan of Rs. 15,000/- was sanctioned in favour one Smt. Kariamamma, who had earlier availed loan and the liability was transferred to LPD 83/2000 and was written off on 27.11.2000. Sh. R R Hoover in his statement admitted that it was a fictitious loan and is adjusted to some other loan account.
- iii) Fictitious loan of Rs. 15,000/- was sanctioned in favour of Sh. Puttamadaiah and whose loan was written off on 22.12.2000. Slips were not prepared for the transactions and the entries were not made in the waste sheet. The 1st Party made entries in ALBC subsidiary and made adjustment in key register without slips. Thus, he admitted in his statement that he had taken signature on the loan paper from some other Sh. Puttamadaiah. Sh. R R Hoover as admitted that it is a fictitious loan and no slips were passed, and the proceeds of loan was adjusted to some other loan account.
- iv) Rs. 15,000/- fictitious loan was sanctioned in favour of Sh. Maraiah whose earlier loan was written off on 22.12.2000. Sh. R.R Hoover prepared the loan papers made entries in the loan register without corresponding slips, 1st Party carried over the balance of Rs. 7.50/- in the account from the old S.B ledger sheet to new sheet and made credit entry of ALBC 3/00 deliberately suppressing the facts and tampering the Bank records.

Likewise fictitious loan of Rs. 15,000/- was sanctioned in name of Smt. Sharadamaa, Rs. 15,000/- in the name of Smt. Mahadevamma, Rs. 15,000/- in the name of Sh. Moodalaiah, Rs. 15,000/- in the name of Sh. Gangaiah, Rs. 25,000/- in the name of Sh. Venkatagiriyaiah, Rs. 25,000/- in the name of Sh. Umesh, Rs. 25,000/- to Smt. Komala, and Rs. 20,000/- in the name of Sh. Kariappa. All the above persons on earlier occasions were sanctioned loan and their loan account were written off/closed and the loan was sanctioned for the second time without their loan application.

Though there is no person as Sh. Gangaiah fictitious loan account was opened and the loan was sanctioned. Sh. R R Hoover has admitted all these fictitious transactions. The 1st Party identified Sh. Kariyappa as his relative though he was not the resident of the service area. The 1st Party admitted that he has taken the loan by signing the documents. By his actions he failed to discharge duty with utmost integrity, honesty, devotion and diligence and contravened the provisions of Chapter XI, Regulation (2A),(i) of the Canara Bank Service Code. He caused wilful damage to the property of the Bank and its customers, committed Gross Misconduct within the meaning of Chapter XI, Regulation 3(j) of Canara Bank Service Code and being prejudicial to the interest of the Bank, committed Gross Misconduct within the meaning of Chapter XI, Regulation 3, Clause(m) of Canara Bank Service Code.

CHARGE - II

- a) He has altered the figures in the key register on various dates to an extend of Rs. 1,30,000/- to offset the entries, subsequently loans were created and from the fictitious loans sanctioned adjustments were made in the key register on 26.05.2000 and 30.05.2000
- b) On 03.04.2000, 2 debit slips for Rs. 50,000/- each to the account of AGVSL 10/2000 and 11/2000 corresponding credit has gone to the account of Sh. Hombalaiah S.B Account 2157, entry is made in Advances Control Register under VSL without debiting it under VSL subsidiary. On 15.05.2000 and 19.05.2000 Rs. 50,000/- was debited to ALS Head which has set off the fictitious entry of VSL by crediting it under VSL head under Advances Control Register. As the VSL entries were not debited in the VSL subsidiary the above amount has not been credited to VSL Subsidiary.
- c) Sh. Hombalaiah had deposited Rs. 1,00,000/- on 03.04.2000, 1st Party admitted giving fictitious credit entry and subsequently gave fictitious credit to the S.B Account.

By the above actions he connived with Sh. R R Hoover/ Manager in all the fraudulent acts in raising funds through fictitious loans, he made fraudulent entries without slips in ledger sheets of Parties accounts and helped for the withdrawal of the amounts through these accounts. He made several alterations/adjustments in key register to avoid detection of fraud and to keep the books tallied. He enjoyed the funds raised through fictitious loans. The 1st Party by his actions failed to discharge duty with utmost integrity, honesty, devotion and diligence and contravened the provisions of Chapter XI, Regulation (2A),(i) of the Canara Bank Service Code. He caused wilful damage to the property of the Bank and its customers, committed Gross Misconduct within the meaning of Chapter XI, Regulation 3(j) of Canara Bank Service Code and being prejudicial to the interest of the Bank, committed Gross Misconduct within the meaning of Chapter XI, Regulation 3, Clause(m) of Canara Bank Service Code.

7. During the Domestic Enquiry on behalf of the Management five witnesses were examined 114 documents were marked. There was no oral/ documentary evidence from the side of the defence.

The first witness was the Present Manager of V.G Doddi Branch, he identified his statement given before the Investigating Officer to the effect that Sh. Gangaiah S/o Munivenkatappa is not in Averahalli, and he was thoroughly cross examined without any benefit for the defence.

The second witness was Sh. Robert Hoover who was the Manager at the relevant point of time. He identified the statement given by him before the investigating Officer, wherein he had admitted all the allegations and also about the indulgence/involvement of the 1st Party workman in the misconduct.

The third witness was the Investigating Officer he identified, his report, statements of witness and relevant documents.

The fourth witness was the Officer, Staff Section, Circle Officer, Bangalore and identified the letter addressed by the Central Office calling for explanation of the 1st Party pertaining to the irregularities and the reply submitted by the 1st Party.

8. The pith of the defence was since MW-2, the Manager had admitted his role that destroys all the allegations against 1st Party. The entire operation was led by the Manager and 1st Party is used as a pawn. Being a peon promotee he reposed total confidence in the acts of the Manager and performed the work as per his direction. The Manager used lack of his knowledge to perpetuate various acts of misconduct. He was not involved in any acts of dishonesty until MW-2 (Hoover) took charge of the Branch during May 1991, he was utilised by taking advantage of his lack of knowledge.

9. During the cross examination of MW-2(Hoover), he had admitted that the 1st Party worked according to his instructions. The 1st Party emphasized on the said statement to get whirl out of the charge sheet.

10. The fraudulent transaction having been proved through documentary evidence which was also admitted by the then Manager Sh. R R Hoover and the indulgence of the 1st Party in the transactions not disputed.

11. The Enquiry Officer observed that “...CSE as a responsible employee of the Bank should have acted as a ‘**Whistle Blower**’ instead of taking advantage of his lack of knowledge and shelter under MW-2 who owned up the responsibility. He ruled out the contention that he being a peon promotee has reposed total faith in the acts of the Manager and performed the work as per the directions of the Manager. He reasoned out that though ‘he is a peon promotee he should know that all the entries in the Bank are being posted in the accounts/ledger with relevant slips. Since the CSE was having the basic knowledge of the Banking like the above, he was promoted to Clerical Cadre. Hence, the lack of knowledge cannot be taken as excuse for posting the entries without slips, but lack of knowledge can be claimed in other areas like appraisals, documentation and preparation of statements etc’. Thus, he found the 1st Party had connived with Sh. Robert Hoover in all the fraudulent acts and in raising funds from fictitious loans as enumerated in the Charge sheet; he had made fraudulent entries without slips in the ledger sheets and in the parties accounts, subsidiaries and made several alterations/adjustments in key register to keep the books tallied. He has also enjoyed the funds raised through fictitious loans. Thus the finding of the Enquiry Officer was “All the charges are proved beyond doubt....” The finding of the Enquiry Officer is founded on undisputed documentary evidence and the admissions that emerged during the evidence of the then Manager Sh. Hoover, who was the partner in the misconducts.

11. Even if for any reason Sh. Hoover takes on the entire responsibility of the irregularities on himself, the 1st Party who by his active indulgence and commission had connived with him cannot be absolved of the charges. Having served in the Bank for 28 years, that too having served as a Clerk for more than a decade, it is not logical to attribute innocence in his favour. The action of the Management in acting upon the Enquiry Report and punishing him with Compulsory Retirement is within its propriety. The punishment commensurates with the gravity of offence it is not in the interest of the institution to allow tainted employees whose commission and omission has bearing on the Administration, Business and Finance of the Bank. The 1st Party workman is not entitled for any relief.

AWARD

The reference is rejected.

(Dictated, transcribed, corrected and signed by me on 06th June, 2019)

JUSTICE SMT. RATHNAKALA, Presiding Officer

नई दिल्ली, 17 जून, 2019

का.आ. 1052.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आईएनजी वैश्य बैंक लि. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बंगलोर के पंचाट (संदर्भ संख्या 55/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 17.06.2019 को प्राप्त हुए थे।

[सं. एल-12012/30/2007-आईआर (बी-1)]

बी. एस. बिष्ट, अवसर सचिव

New Delhi, the 17th June, 2019

S.O. 1052.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (1947 of 14), the Central Government hereby publishes the Award (Ref. No. 55/2007) of the Central Government Industrial Tribunal-cum-Labour Court Bangalore, as shown in the Annexure, in the Industrial Dispute between the management of ING Vysya Bank Ltd. and their workmen which were received by the Central Government on 17.06.2019.

[No. L-12012/30/2007-IR (B-1)]

B. S. BISHT, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIUBNAL-CUM-LABOUR COURT,
BANGALORE – 560 022**DATED : 03RD JUNE 2019

PRESENT : Justice Smt. Rathnakala, Presiding Officer

CR 55/2007

<u>I Party</u>	<u>II Party</u>
The Assistant Secretary, All India ING Vysya Bank Employees Union, C/o ING Vysya Bank Ltd., Barandur – 577245, SHIMOGA	The Vice- president - IR&W, ING Vysya Bank Ltd., Corporate Office, HRD Department, ING House, M.G Road, Bangalore – 560001.

Appearance

Advocate for I Party : Mr. Muralidhara

Advocate for II Party : Mr. B. C. Prabhakar

AWARD

The Central Government vide Order No.L-12012/30/2007(IR(B-I) dated 11.04.2007 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

“Whether the action of the Management of ING Vysya Bank Ltd. in imposing the punishment of compulsory retirement with all benefits including pension w.e.f. 07.06.2006 on Shri. B.S.Navalgatti, Ex.Clerk, ING Vysya Bank Ltd., Byadagi Branch is legal and justified? If not, to what relief the workman is entitled?”

1. The 1st Party union has espoused the cause of Sh. B S Navalgatti. Their case is the 1st Party workman joined the service of 2nd Party Bank on 20.10.1979 and was working in Byadagi Branch as clerk. On certain allegations he was placed under suspension pending departmental enquiry, by the Head - employee relations. He was issued Charge Sheet dated 10.06.2005 in respect of the incident of 28.05.2005; he denied the Charges; Departmental Enquiry was initiated by appointing the Enquiry Officer and the Management Representative. The Enquiry Officer was biased, he held the enquiry in violation of Bank Regulations and Bi-partite settlement and also against the principles of Natural Justice and submitted the enquiry report that charges levelled against Sh. Navalgatti are established. The 1st Party submitted his remarks to the enquiry report. However, the Head-Employee Relations/Disciplinary Authority issued show cause notice proposing the punishment of 'compulsory Retirement'. He has submitted his objection to the proposal of punishment. However, without considering his unblemished service and without assessing the evidence independently the 2nd Party vide order dated 23.05.2006 imposed the punishment of compulsory retirement on him. The punishment order is grossly disproportionate to the alleged act of misconduct. Now he is unemployed.

2. The 2nd Party counters the claim that the enquiry was held in a fair and proper manner. The enquiry Officer held him guilty of charges after conducting the enquiry and after analysis of the evidence, gave his conclusion with cogent reasons. This Disciplinary Authority has rightly come to the conclusion in imposing the punishment. The punishment is very much proportionate to the alleged misconduct.

3. On pleadings of the parties preliminary issue regarding fairness of the Domestic Enquiry was framed, tried and answered in favour of the Management, holding the Domestic Enquiry held against the 1st Party is fair and proper. The 1st Party workman thereafter has adduced evidence to bring on record that he is unemployed and the punishment order is grossly excessive; the 2nd Party has continued other employees who though alleged of serious misconduct are continued on service; he is victimised by the 2nd Party.

Both have addressed arguments.

4. The allegation in the Charge Sheet is as under:-

You have behaved in a disorderly, indecent, riotous and rude manner with Sri. B N Sodar, Branch Head on 28.05.2005 by holding his shirt collar and scratching him on his face in the presence of customers inside the premises of Byadagi Branch and thereby caused injuries to him on his face. Your above said behaviour which adversely affected the image of the Bank, was also prejudicial to the interest of the Bank.

5. The prosecution examined as many as five witnesses and marked seven documents. The 1st Party examined himself as a witness and two witnesses.

6. The first two witnesses for the Management are the customers of the Branch, they were the eye witness to the incident. The Complainant/Manager of the Bank gave the detailed version of the incident. The Investigating Officer who investigated the matter recorded the statement of witnesses was the fourth witness. The fifth witness was the Assistant Manager of the Branch, who is also an eye witness.

7. In sum and substance the prosecution case was, on 28.05.2012 the CSE came late to the Bank; when questioned by the Manager, he told that his is sick. The Manager told him to return and come on 30.05.2005 with medical certificate. The CSE started shouting on him and told him that the matter can be reported to anybody and he will see to it, he bounced upon the Manager. The staff in the Branch came to the chamber, took CSE outside the chamber while the Manager was telling him not to do like this in the presence of customers, the CSE raised his voice, told that what could the Manager do for him and caught hold of his shirt collar; he scratched on his neck thereby causing bleeding. At the intervention of Hombardi (1st witness) both were separated and the CSE was taken out and the matter was reported to the Associate Wise President Regional Office Hubli. The Complainant got treated by the Doctor and produced the medical certificate.

8. The defence was that he went to the Branch 5-7 minutes late to the schedule time, he requested the Officer (MW-5) for his permission to attend his duty. The Officer told him to go on leave as he was late and declined to allow him to work; after a lapse of five minutes the Officer instructed him to meet the Manager and take permission; The Manager did not allow him to attend the duty but said that he should apply for leave. He waited for 5 minutes again made request, but the Manager insisted him to apply for sick leave, he went to the Manager to submit his casual leave application, but the Manager refused saying he has availed three days leave and not entitled for casual leave. But he is entitled for casual leave of three days. Hence, he questioned the Manager in this regard and the Manager pushed him to go on leave; during the said process his hand touched his shirt. During cross examination he stated that his hand may have touched his neck. The 2nd defence witness turned hostile to the defence stating that he heard loud voice from the chamber but he has not seen any quarrelling of fighting. The 3rd defence witness is a customer of the Branch but not a eye witness to the incident.

9. From the evidence it was clear that the 1st Party came late to the Bank at 28.05.2005, and was not allowed to resume duty but was insisted to report along with Medical Certificate. From the evidence of the prosecution witnesses and also the CSE it is further clear that the CSE questioned the Manager and the incident culminated into heated argument involving physical indulgence and there was nothing to presume the provocation was from the side of the Manager. The overtact exhibited by the CSE is established by the Medical Certificate certifying that the Manager suffered nail injury on his face. Rightly the Enquiry Officer held that charge levelled against CSE is proved. The CSE had contended in his written brief submitted to the Enquiry Officer that his mother was sick and expired on 30.05.2005, but the Enquiry Officer had observed that the Manager was not aware of the sickness of his mother.

10. The Disciplinary Authority observed that as per clause 13.13 of 1st Bi-Partite settlement the Branch Head has right to ask for medical certificate while re-joining to duty if the leave is availed for medical reasons; as per clause 13.06 leave cannot be availed as a matter of right. In the light of the above provisions the Disciplinary Authority supported the stand of the Manager insisting for medical certificate when CSE informed that he went on leave for medical reasons and on the above, proposed the punishment of compulsory retirement and passed the punishment order.

11. The 1st Party in a rather sarcastic manner drafted his appeal memo contending that the basic issue of the Charge Sheet was causing injury on the face of the Manager which was not proved. He alleged that unfair and unequal treatment was given to him by the Bank Official on 28.05.2012; he questioned the veracity of the Medical Certificate. He alleged that the witnesses examined were interested witnesses. He stressed upon the fact that he was not requesting for leave but was forced to go on leave. He cited the cases where sick leave was given for two days without Medical Certificate. According to him '*in an extra ordinary situation like sick due to mother laying on death bed; special provision of Bi-partite is not considered.....*'

12. The Appellant Authority was not persuaded by his defence and observed that '*.....CSE not only caused injuries to Branch Head but also contributed for adversely affecting the image of the Bank; his behaviour was prejudicial to the interest of the Bank. The Behaviour of the above type if allowed to continue unchecked will lead to indiscipline and in subordination among employees of the Bank which will in turn have adverse effect on the customer service and image of the Bank.....*' .

13. The service records of the 1st Party are marked as Ex M-1(v) to M-16(v). While joining to the Bank as Trainee he had mentioned in his application dated 23.03.1978 that he knows Typewriting. But immediately thereafter vide letter dated 17.02.1980 wrote to the Manager that he has not passed Typing examination and don't know typing and requested for the post as clerk and not as clerk cum typist. When a memo was issued to him in this regard, he resisted to say that he knows type writing and can type very well. On that he was cautioned not to repeat such things in future. He was issued memo dated 08.03.1980 (Ex M-7(v)) that he is slow in carrying out the work entrusted. Vide memo dated 19.10.1984 he was called upon to show the reasons for not updating the allotted work, but he has replied that '*any way you have got the powers you please suspend me*', but did not give assurance to speed up the updating work.

14. On 23.11.1984 he was issued show cause notice for not performing allotted duties vide Annexure M-9(v). Vide show cause notice 31.05.1985 he was issued show cause notice for his behaviour and his disobedience during Office hours; vide Administration Order dated 25.07.1985 (Ex M-13(v)) he was warned to be careful in future. Vide letter dated 07.06.1989 (Ex M-16(v)) he submitted resignation letter (Ex M – 14(v)) which probably he withdrew later. Vide memo dated 10.06.1989 (Ex M-15(v)) he was issued memo for not responding to the request of the customers and on 08.06.1989 instead of resuming to duty he had tendered his resignation and left the branch. The above are the undisputed documents which go to establish the adamant nature and attitude of the 1st Party. It can be safely inferred from the above documentary evidence that the incident of 28.05.2005 was not solitary or instantaneous but was his way and demeanour.

15. The Hon'ble Supreme Court in the case of [State of Punjab and Ors. v. Ram Singh Ex.Constable](#) reported in (1992) 3 SCR 634, while elaborating on the term 'Misconduct' observed thus,

'That the word misconduct though not capable of precise definition, its reflection receive its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour, unlawful behaviour, wilful in character, forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve'.

16. What is misconduct will naturally depend upon the circumstances of each case. When there are standing orders, there would be no difficulty because they define misconduct. In the absence of the Standing Orders, however, the question will have to be dealt with reasonably and in accordance with commonsense. As to what acts can be treated as acts of misconduct, therefore, would depend on the facts and circumstances of each case. The expression 'misconduct' covers a large area of human conduct. Misconduct spreads over a wide and hazy spectrum of industrial activity, the most seriously subversive conducts rendering an employee wholly unfit for employment to mere technical default are covered thereby. To some extent, misconduct is a civil crime which is visited with civil and pecuniary consequences. That being the principle operating in the area of adjudication of misconduct in Departmental/Domestic Enquiries, the overtact committed by workman cannot be viewed leniently. He has shouted against his superior at the work place, when insisted for Medical Certificate committed an act unbecoming of an employee of the Bank amounting to insubordination. His demeanours is sure to adverse and affect the interest and business of the Bank

17. In view of the above I find no illegality or in propriety from the action of the 2nd Party in imposing punishment of Compulsory Retirement with all terminal benefits and pension. The workman is not entitled for any further relief.

AWARD

The reference is rejected.

(Dictated, transcribed, corrected and signed by me on 03rd June, 2019)

JUSTICE SMT. RATHNAKALA, Presiding Officer

नई दिल्ली, 17 जून, 2019

का.आ.1053.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. II, चण्डीगढ़ के पंचाट (संदर्भ संख्या 8/2009) को प्रकाशित करती है जो केन्द्रीय सरकार को 17.06.2019 को प्राप्त हुआ था।

[सं. एल-12012/06/2009-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 17th June, 2019

S.O. 1053.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.8/2009) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No -II Chandigarh as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 17/06/2019.

[No. L-12012/06/2009-IR (B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present : Sh. A.K. Singh, Presiding Officer

ID No. 8/2009

Registered on: 10.08.2009

Sh. Amarjit Singh, S/o Sh. Fauja Singh, R/o H.No.441/1,
Village and Post Office Khuda Ali Sher, Chandigarh UT.

...Workman

Versus

1. State Bank of India, Corporate Centre, State Bank Bhawan, Madame Cama Road, Mumbai, through its Chairman.
2. State Bank of India, Local Head Office, Sector 17-A, Chandigarh UT, through its Chief General Manager,
3. State Bank of India, Zonal Office, Punjab, Post Box No.95,
SCO No.101-108, Sector 17-B, Chandigarh-160017,
through its Deputy General Manager.

..Respondents

AWARD

Passed on : 26.04.2019

Central Government vide Notification No. L-12012/06/2009-IR(B-I) Dated 24.06.2009, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

“Whether Shri Amarjit Singh was a workman of the State Bank of India or not? If so, Whether the action of the management of State Bank of India in terminating the services of Shri Amarjit Singh w.e.f. 7.1.2008, is justified? If not, to what relief he is entitled?”

1. Both the parties were served with notices. The workman/claimant filed his statement of claim with the averment that he was appointed as a Messenger on daily wages by the management vide order bearing no.CM(DGM) Circle(PB) note no.AGM/57/664 dated 28.01.1992 and performed work of Peon-cum-Chowkidar/Guard as per direction of management regularly with the management without any break. He was drawing a sum of Rs.3,700/- per month from the management with other benefits etc. The management started victimizing the workman one or another ground in the beginning of 2007, resulting non-payment of wages for the months of January, June, July, August and October 2007. In spite of oral and written representations dated 14.11.2007, 29.11.2007, 17.12.2007 and 03.01.2008 management neither rejected his representations nor replied till date. The management illegally retrenched the services of the workman on 07.01.2008 by oral order of Deputy General Manager without service of any notice, pay in lieu of notice against the provisions of Section 25-F and 25-G of the Industrial Disputes Act, 1947. The work of Peon-cum-Chowkidar/Guard is still existed with the management and is of permanent nature. Management had employed some new workers for the post of workman through some contractors against the violation of Section 25-F of the Industrial Disputes Act, 1947. The workman is still unemployed and willing to work with the management. The workman had never worked under any

contractor during his service with management-bank. In fact, the workman was serving only the bank under their control in their office as well as per their requirements which is amply proved from the documents A to U mentioned in claim petition which are in the form of letters, wages slips, cheques, income tax deductions and several representations etc. In spite of demand notice, the dispute could not be settled amicably. Hence, present reference by the workman has been made before this Tribunal. It is prayed that workman be reinstated with continuity of service with full back wages and all other ancillary benefits as his services were terminated by the management.

2. Respondent's-bank have filed written statement dated 09.08.2010, alleging therein that workman had never in the employment of the answering-management and there was no relationship of privity of contract whatsoever between the workman and the answering management. The workman was engaged by the contractor for providing his services to the said contractor to enable the contractor to provide necessary service to the answering respondent as per agreement arrived at between the answering management and the contractor. It is pertinent to mention that the Zonal Office Punjab, State Bank of India, Chandigarh, has obtained the parking place for the vehicles of its staff on rent basis from the Parking Contractor of the Chandigarh Municipal Corporation on annual lease basis and the services of the applicant were availed by the contractor to fulfill his commitments. The claimant/workman was never appointed by the respondent-bank at any time and he was never worked as a Gunman, Security Guard under answering respondent and his salary was never paid by the respondent-bank. Thus, there was no relationship of employer and employee between the answering management and the claimant/workman and his statement of claim is to be rejected on this ground alone. Respondent-management never issued any appointment/termination letter to the claimant as such, there is no retrenchment dated 07.01.2008 against the claimant by the answering management. The claim of the workman is misconceived and he has concealed the material facts that he was engaged by the parking contractor and was being paid by the said contractor. The order bearing No.CM(DGM) Circle (PB) note no.AGM/57/664 dated 28.01.1992 does not pertain to the workman at all. The representation dated 14.11.2007 has been duly replied by the management vide its letter dated 07.01.2008 as claimant was not within the employment of the bank hence, retrenchment compensation, retaining juniors does not arise and the management has not violated any provision of Section 25-F, 25-H of the Industrial Disputes Act, 1947. The entire amount of the claimant/workman in this regard had been paid to the said contractor as per agreement. The claimant/workman has been gainfully employed throughout the period and the payment to the workman was made by the debit to the contractor's fee as per instructions and settlement with the contractor out of the total amount payable to the contractor. The stand of the management is vindicated by the issuance of certificate of deduction of tax at source under Section 203 of Income Tax Act 1961 vide TDS Form No.16-A which is applicable on the payment to contractors and sub-contractors as mentioned in the certificate itself. It is requested that the claim filed by the workman is liable to be dismissed with cost.

3. The workman Amarjit Singh has filed his affidavit Ex.A1 in evidence along with documents pertaining to the date 28.01.1992 to 03.01.2008 and proved by the workman as Ex.W-1 to W-22. During the course of cross-examination, workman Amarjit Singh has accepted that letter of appointment was not issued to him by the management. He has denied that he worked at the cycle stand as the man of the contractor. He has also accepted that bank did not give any termination order but it was told orally. He has denied the suggestion that bank used to make the payment to the contractor and the contractor used to pay him thereafter.

4. The respondent-management has examined Sh. Rajesh Gupta, Chief Manager(HR), Zonal Office Sector 17-B, Chandigarh, who has filed his affidavit Ex.R1 dated 12.03.2013 reiterating the facts alleged in the written statement along with Annexure 1 to 3, which is regarding car parking contract. Sh. Rajesh Gupta, during the course of cross-examination by the learned counsel of workman has alleged that he has not brought the copy of the contract entered into between the management and contractor and he has also denied that original of Annexure 1 to Annexure 3 are not with him at the time of cross-examination. This witness has accepted the genuineness of documents mention in the claim petition as well as proved by the workman through his affidavit Ex.W1 to W22 which almost pertains to the management-bank.

5. I have heard Sh. Karam Singh, learned counsel for the workman and Sh. S.K. Gupta, learned counsel for the management and have gone through the records carefully.

6. Learned counsel of the workman has contended that claimant/workman has joined the management-bank in the month of January, 1992 as Peon-cum-Chowkidar directly to perform his duties as waily wager and subsequently, appointed on regular basis for a salary of Rs.3,700/- per month. It is also contended that claimant/workman is terminated on 07.01.2008 without complying with the provisions of Industrial Disputes Act, 1947 without any notice and justification, which is not sustainable in the eye of law. Learned counsel has also argued that claimant/workman had worked more than 240 days in each calendar year with the management since his appointment in the year 1992. It is also contended that workman/claimant has never served to the management-bank as an employee of any contractor and if it is found so, the alleged contract is shame and camouflage just to avoid the responsibility arising under Industrial Disputes Act, 1947. It is also argued that the alleged contractor was not a licenced contractor as such, respondent-bank had taken his services against the provisions of Contract Labour(Regulation & Abolition) Act 1970.

7. Per contra, learned counsel of the management-bank Sh. S.K. Gupta argued that claimant is neither a workman nor appointed by the management-bank as alleged in the claim petition. It is also contended by the management-bank that there was no relationship of employer and employee between the workman and management as such, respondent-

management has no liability towards the workman. It is contended that being the employee of the contractor, if any liability occurs, it is between workman/claimant and contractor under whom he served during the employment period. Learned counsel of the management has also argued that on the face of the facts pleaded in claim petition, it is clear that workman is not appointed after making advertisement and duly no selected by any committee so far hence, he cannot be reinstated in service as is held in case of Madhyamik Shiksha Vs. Anil Kumar and others AIR 1994 Supreme Court 1638 as well as in the case of G.M. Tanda Thermal Power Project Vs. Jai Prakash Srivastava and ots. 2008(1) SLR page 670 and in the case of U.P. Corporation Ltd. and others Vs. Bijali Mazdoor Sangh and other (2007)5 SSC 755.

8. There is no dispute about preposition of law that onus to prove that claimant was in the employment of management is always on the workman/claimant and it is for the workman to adduce evidence to prove factum of his employment with the management. Such evidence may be in form of receipt of salary or wages for 240 days or record of his appointment or engagement for that year to show that he has worked with the employer for 240 days or more in a calendar year. In this regard, reference may be made to the case of Batala Coop. Sugar Mills Ltd. Vs. Sowaran singh, (2005) 8 Supreme Court Cases 481 as well as Director Fisheries Terminated Division Vs. Bhikubhai Meghajibhai Gavda (2012) 1 SCC 47.

9. There is hardly any dispute with the preposition of law as propounded in the aforesaid cases. Question remains to be seen whether the workman has proved that he was directly engaged under the respondent-management in the month of January 1992 and regularly continued to work till his termination. This fact has to be proved through documentary evidence as well as oral evidence. At the very outset, it may be mentioned that claimant/workman has filed a lot of documents Ex.W2 to W12 relating to daily wage slips, cheque issued by the bank in favour of the workman, form 16-A issued under Section 203 of the Income Tax Act, 1961 which clearly prove that workman was in the service of management initially as daily wagger at the cost of Rs20/- per day, which was subsequently made Rs.3,700/- per month and accordingly paid by cheque to the workman by the respondent-bank. These are the papers genuineness of which has been accepted by the witness of the management Sh. Rajesh Gupta during his cross-examination by the workman counsel. The documents Ex.W1 to W12 runs from the year 1992 to May 2007 fortifies the claim of the workman that he was directly appointed by the respondent-bank from the year 1992 and served till his termination. This fact is reiterated by the workman Amarjit Singh through his affidavit Ex.A1. Learned counsel of the management has not put any question regarding the documents filed by the workman and duly proved through his affidavit filed as a piece of evidence before the Tribunal.

10. Contrary to this, learned counsel of the management argued that in fact workman was appointed by the contractor Balbir Singh in the year 2004 to 2005 when he had got a contract from the Municipal Corporation, Chandigarh as is evident from Annexure A-2 and A3 filed by the management and proved by the witness of management Rajesh Gupta through his affidavit Ex.R-1. Annexure 2 is a letter sent by the contractor Balbir Singh addressed to Chief Manager, Zonal Office Punjab, regarding the allotment of the premises of Municipal Corporation and conditions regarding security guards etc. while Annexure A-3 is a letter sent by the Deputy Chief Manager to claimant after his termination and representation made by him for the payment withheld by the management-bank. Witness of management Rajesh Gupta has accepted during the cross-examination that he has not brought the copy of the contract entered into with contractor. He has also accepted that he has not brought the original of Annexure A-1 to Annexure A-3. Thus, in spite of opportunity management has totally failed to submit the copy of agreement/contract entered into with contractor Balbir Singh whose existence is not proved before September 2004. Thus, there is nothing on record to rebut the documentary evidence filed by the workman regarding his employment as daily wagger employee and subsequently as regular employee on fixed pay of Rs.3,700/- per month. Thus, it can be safely observed that management has not provided its best evidence in its possession regarding the contract with Balbir Singh which have got on the file may have proved that the workman have ever been employed by the contractor. Legally speaking if there was no employment between the workman and management and the workman had been paid to work on the premises of the establishment of the management-bank. It was still to maintain the prescribed register and records pertaining to the contract labour as per the provisions of Contract Labour(Regulation & Abolition) Act 1970 in short CLRA Act. The management being the principle-employer was legally bound to maintain a register as envisaged under Section 29 of the Act and in terms of Rule 73 of the Rules framed thereunder. The management should have to prove a licence registration under CLRA Act while such records being maintained in case of the management denying relationship of employer could have been considered in the light of the documentary evidence while no such evidence is brought to bear for the consideration before this tribunal as such, it clearly establishes relationship of employer-employee between the management and claimant. In this regard, reference can be made to the decision in the case of Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Court 2532, has observed as follows:-

“The source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one

employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman."

Thus Hon'ble Supreme Court has clarified that the definition of workmen also does not make any distinction between full time or part time employee or a person appointed on contract basis. There is nothing in plain language of Section 2(S) from which it can be infer that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman. In view of the ratio of law enunciated in the above ruling, in my considered opinion the claimant herein admittedly falls within the definition of 'workman' under Section 2(S) of the Act.

11. Equally settled is the position of law that when relationship of employer-employee stands proved between the parties, then onus will shift upon the employer-management to show that the claimant has not worked for 240 days or more in a calendar year or that the services of the claimant was terminated in accordance with the provisions of the Act. It is a specific case of the workman/claimant that he was engaged as a Peon-cum-Chowkidar on 28.01.1992 and he worked as such till his termination in the year 2008 when his services were illegally terminated. He in fact had completed more than 240 days of service in each calendar beginning from the year March 1992 till his termination in the year January 2008 despite that no notice in lieu of notice period was given to him prior to the termination of his services by the management. The affidavit filed by the workman/claimant is in the line with the averments made in the claim petition. He has also filed on record wages slips for the month of March 1992, April 1992 along with cheques issued by the management-bank for the payment of the services rendered by the workman which are marked as Ex.W2 to Ex.W8. Ex.W9 and Ex.W10 filed by the workman is the certificate of deduction of tax at source under Section 203 of the Income Tax Act 1961, which clearly establishes that management had directly deducted the deductions from the salary of the workman for the year 2003-2004 and 2004-2005. In this context learned counsel of the workman has drawn my attention towards Annexure-1 filed by the management which is a letter sent by the alleged contractor Balbir Singh to the Chief Manager State Bank of India, Zonal Office Punjab dated 23.11.2005 mentioning the facts that he will continue with the present security arrangement and will keep Amarjit Singh as Supervisor for the parking at Rs.3,700/- till the parking contract. It also reveals that the payment has to be directly made to Amarjit Singh by debit to contractor's fee. Thus, according to the learned counsel of the management this document is ample proof that claimant Amarjit Singh has been recruited for security purpose by the contractor Balbir Singh and not by the management. I am not convince with the arguments advanced by the learned counsel of the management because this letter relates to the date 23.11.2005 while the deductions of the income tax is related to the year 2003-04, 2004-05 when contractor Balbir Singh was nowhere in existence. It appears that this letter was obtained by the management just to deny the claim of the workman proving him as an employee of the contractor Balbir Singh.

12. Learned counsel of the workman Sh. Karam Singh appearing for the workman has disagreed with the story of the contractor Balbir Singh between the management and the claimant by referring to the pleadings before me. He drew attention of this Tribunal to the written statement dated 09.08.2010 filed on behalf of the management before labour court. There is conspicuous absence of any mentioning of the contractor Balbir Singh therein. I have no doubt in my mind that attempt to introduce the contractor into the picture is clearly an afterthought. The management did not even produce the licence of the alleged contractor Balbir Singh which otherwise could have substantiated the stand of the management-bank as Security guard of the bank have been assigned to such contractor and the workman having further been outsourced by the contractor and there is no relationship of employer and employee between the parties. Therefore, in my opinion, the story of Balbir Singh is an afterthought. Learned counsel has cited the basic law which required no elaboration that what has not pleaded is not open to prove. There is merit in the contention against which Sh. S.K. Gupta is unable to shrug of therefore when the management pleaded that there was no direct relationship of employer and employee between the parties which could have proved each of the case from the stand point of the management alone. Moreover, contractor Balbir Singh is not a party to the reference the only possible way for the management to have come out was to summon the contractor as his own witness for them to face cross-examination by the workman/claimant so that the truth could be revealed.

13. There is no merit in the stand taken by the management that no regular procedure was followed at the time of engagement of the workman nor application was invited for the post of Peon-cum-Chowkidar. To my mind, the workman herein is not seeking regularisation or permanent absorption with the management-bank simply because due procedure was not followed at the time of engagement of the workman herein that would not give licence to the management to terminate the service of the workman in arbitrary and illegal manner. There are several judgments of the Hon'ble Apex Court that service of a daily wager or casual workman cannot be terminated without following the due procedure contained in Section 25-F of the Act. Admittedly, in the present case, no show cause notice was served upon the workman before ordering his termination nor one month salary in lieu of notice was given in advance to the workman at the time of his termination. All these facts are duly admitted by the management in the written statement. It has been held in several decisions by the Hon'ble Apex Court as well as various High Courts that termination of service of a workman, who has served for more than 240 days in a calendar year preceding his termination, will become arbitrary and illegal unless one month notice or one month salary in lieu of such notice is given to such workman at the time of his termination. In this regard, reference can be made to the case of Ajay Pal Singh Vs. Haryana Warehouse Corporation 2056 Supreme Court cases and ONGC 2483 Supreme Court Mechanised Company Vs. Mechanised Union 2004

Supreme Court cases 544. Since in the present case, the management has throw all the norms of natural justice as well as provisions of ID Act to the winds. As such, the action of the management is held to be totally arbitrary and illegal under the law.

14. Now the residual question is whether the workman is entitled for reinstatement of service with back wages. Admittedly, the workman was not holding any regular post nor any procedure was followed by the management at the time of his engagement as Peon-cum-Chowkidar. But it is also a fact that management has been engaged him as Peon-cum-Chowkidar in this manner, and workman has put more than 15 years of service.

15. The Hon'ble Apex Court in case **"Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya" reported as (2013) 10 SCC 324** has held as under:

- (i) *In case of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.*
- ii) *Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then I has to plead and also lead cogent evidence to prove that the workman wads gainfully employed and was getting wages equal to the wages he wads drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments."*

16. Hon'ble Apex Court in the case of **General Manager, Haryana Roadways Vs. Rudan Singh, reported as 2005 SCC (L & S) 716** observed as under:-

"There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors which has to be taken into consideration is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at this age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. A regular service of permanent character cannot be compared to short or intermittent daily wage employment though it may be for 240 days in a calendar year."

17. The Hon'ble Apex Court while considering the violation of Section 25-F of the Act in **Incharge Officer & Anr. V. Shankar Shetty, (2010) 9 SCC 126; 2010 LLR 1137** and after referred to the various decisions, this Court held that the relief by way of back wages is not automatic and compensation instead of reinstatement has been held to meet the ends of justice and it reads as under:-

"2. Should an order of reinstatement automatically follow in a case where the engagement of a daily wager has been brought to end in violation of Section 25F of the Industrial Disputes Act, 1947(for short "the ID Act")? The course of the decisions of this Court in recent years has been uniform on the above question.

3. In Jagbir Singh V. Haryana State Agriculture Mktg. Board, (2009) 15 SCC 327, delivering the judgment of this Court, one of the us (R.M. Lodha, J.) noticed some of the recent decisions of this Court, namely, U.P. State Brassware Corpn. Ltd. V. Uday Narain Pandey, (2006) 1 SCC 479; Uttaranchal Forest Development Corpn. V. M.C. Joshi, (2007) 9 SCC 353; State of M.P. v. Lalit Kumar Verma, (2007) 1 SCC 575; M.P. Admn. V. Tribhuban, (2007) 9 SCC 748; Sita Ram v. Moti Lal Nehru Farmers Training Institute, (2008)5 SCC 75; Jaipur Development Authority v. Ramsahai, (2006) 11 SCC 684; GDA v. Ashok Kumar, (2008) 4 SCC 261 and Mahboob Deepak v. Nagar Panchayat, Gajraula, (2008) 1 SCC 575 and stated as follows: (Jagbir Singh case (2009) 11 SCC 327, SCC pp. 330 & 335, paras 7 & 14)

"7. It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back-wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back-wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an

employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.

14. It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25F although may be set aside but an award of reinstatement should not, however, be automatically passed."

18. Yet, in another latest judgment i.e. **District Development Officer Vs. Kanti Lal 2018 LLR 225** while considering the question of reinstatement along with back wages of a daily wager, who have put two and a half years of service, the Hon'ble Apex Court granted a lump sum compensation of Rs.2.50 lac in lieu of reinstatement. The workman herein was not holding a regular post of Peon-cum-Chowkidar and he was simply engaged as daily wager. Moreover, management has already employed some other workmen in his place as such, having regard to duration of service, it would be in the interest of justice and fair play if compensation of Rs.6 lac be awarded as lump sum compensation to the workman. Accordingly, the reference is answered by holding that action of the management-bank Chief Manager in terminating the service of workman Amarjit Singh is unjust, unfair and illegal and a amount of Rs.6 lac is ordered to be paid as lump sum compensation to the said workman by the management and in case, this amount is not paid within one month from the date of publication of the award, the workman shall be entitled to the said amount with 6% interest from the date of making of the reference till realisation.

A. K. SINGH, Presiding Officer

नई दिल्ली, 17 जून, 2019

का.आ. 1054.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दक्षिण पूर्व मध्य रेलवे प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नागपुर के पंचाट (संदर्भ संख्या 89/2013-14) को प्रकाशित करती है जो केन्द्रीय सरकार को 17.06.2019 को प्राप्त हुआ था।

[सं. एल-41012/14/2014-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 17th June, 2019

S.O. 1054.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 89/2013-14) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No -II Chandigarh as shown in the Annexure, in the industrial dispute between the management of South East Central Railway and their workmen, received by the Central Government on 17/06/2019.

[No. L-41012/14/2014-IR (B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

BEFORE SHRI S.S.GARG, PRESIDING OFFICER, CGIT-CUM-LABOURT COURT, NAGPUR

Case No. CGIT/NGP/89/2013-14

Date: 27.05.2019

Party No.1 : The Senior Divisional Personnel Officer,
South East Central Railway,
Kingsway,
Nagpur (Maharashtra).

Versus

Party No.2 : Shri Pawan Singh Thakur,
R/o. Punjabi Line, Near to Jain Building,
Brokar Chawl Bezon Bagh,
Nagpur

Party No.3 : The General Secretary
Parcel Portal Sanghathan
New Mankapur Plot no. 37, Near Mhada Colony
Nagpur- 440030.

- Party No.4** : Ministry of Railways,
Rail Bhawan, Estt.LL,
New Delhi: 110001.
- Party No.5** : The Chief Administrative Officer,
Garden Reach, Kolkata: 43.

AWARD

(Dated: 27th May, 2019)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Manganese Ore(India) Ltd. and their Union, Bhartiya Manganese Mazdoor Sangh (BMS) for adjudication, as per letter **No.L-41012/14/2014-IR (B-I) dated 25.02.2014**, with the following schedule:-

"Whether the action of the management of South East Central Railway, Nagpur in issuing the termination notice to Shri Pawan Singh Thakur, Bunglow Peon to Dy. C.E. (Con.) Bilaspur is just fair and legal? If not, to what relief is entitled to the concerned workman?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the union "Parcel Portal Sanghtana ("the union" in short) filed the statement of claim and the management of South East Central Railway, and South Eastern Railway Gardenreach Road Kolkata (here-in-after referred to as the "Party No. 1") filed its written statement.
3. Union filed the statement of claim by asserting that workman Shri Pawan Singh Thakur initially appointed as Bungalow Peon by the party no.1 and he was paid salary and wages regularly as per Central Pay Scale applicable to Group 'D' employees. His appointment was approved by General Manager of Zonal Railways (Personnel) and followed by medical examination on behalf of Railway on 12.09.2000. According to the union in medical examination he was found fit in Cee Two Medical category and after submitting medical certificate he joined Dy. C.E. Construction, Bilaspur.
4. After clearing all test and recruitment procedure for employment in railway service an office was order issued by the C.E. Construction, Bilaspur and he was posted with Mr. Viren Kumar, Dy. Chief Engineer, as Bungalow Peon. He was transferred to Garden rich Kolkata and Railway directed him to join as Bungalow peon with Mr. Viren Kumar at Garden Reach Kolkata by the office order dated 03.10.2001. He also asserted that before the transfer to Kolkata he was also transferred with Viren Kumar from Nagpur to Bilaspur. According to him office issued transfer pass, LPC along with other transfer facility applicable at par with permanent staff to join Garden Rich Kolkata.
5. According to the Union, Shri Viren Kumar advised him to report his duty at Bilaspur. After that Senior Personnel Officer, Garden Rich Kolkata Memorandum declared the applicant unfit and issued notice of termination on 08.10.2001 for 14 days. According to the Union, Railway did not followed the procedure in termination proceedings which is unjust, unfair and illegal and violation of the provision of 25-M of I.D. Act. Party no.1 and 5 did not pay lay off compensation. No medical authority declared him unfit. In this way Union prays that termination is illegal and without lay off compensation, so they pray that he may be reinstated with full back wages. They also pray for the retrenchment compensation.
6. On behalf of Party no.1 South Eastern Central Railway, Bilaspur filed written statement by taking preliminary objection that 1. General Secretary, Parcel Portal Sangathan as no locus standi, 2. Chief Administration officer (C) GRC Garden Rich Kolkata is not made a party, non they took plea of non joinder of necessary party, 3. This reference is time barred, because matter of issue was relating to 2001 and they take objection that Garden Rich Kolkata was not made a party. They also denied all relevant fact taken by the Union in statement of claim by asserting that workman was in regular employment. According to them he will not confirmed in incumbent of any title of claim for future appointment. Then reply to para no. 2 and 3 of statement of claim they asserted that fact mentioned in these paras are matter of record. Rest of the facts denied by the management by asserting that post of workman is purely on temporarily basis. They also denied that applicant has worked with full devotion, honestly and without break. It is also denied that workman was entitled any compensation and also denied that violation of legal procedure in termination of workman. In prayer they requested that statement of claim by rejecting with heavy and exempla nary cost.
7. On behalf of SECR, Garden Rich Kolkata, (Party no. 5), also filed written statement by asserting that there is no post as such. According to them Bunglow Peon now called as TADK-Telephone Attendant-cum-Dak Khalasi. They also take preliminary objection that delay of 17 years so it is time barred. According to them 14 days notice of termination is mandatory. They also objected that after more than 4 years they made party in this case. According to them after 10 years paid vouchers not available in their office because they were destroyed. They also denied that workman has a genuine case. According to them statement of claim is misconceived and misconstructed. They also took plea that the Union Parcel Portal Sangathan has no Locus Standi.

8. According to the party no.5, Bungalow Peon is a temporary post and only recommendation of the incumbent officers his service is regularized. According to them “workman had not acted in manner in which he was suppose to perform his duties. Applicant has failed to show any laxity of the officer”. They pray that such time barred statement of claim is to be rejected because cause of action arose in Kolkata, West Bengal, but petition was filed at Nagpur. They also prayed that, reference is to be answered in negative.

9. On behalf of the union or workman filed rejoinder by reiterating on same footings of statement of claim. They also asserted that, preliminary objection raised by the management, violated the norms of pleading and also some short of unfair labour practice. According to them, they raised their dispute before the proper forum and also prayed that, transfer of officer from one place to another, the Bungalow peon to be left on the same place, where he was originally appointed by keeping the welfare of workman in mind. As per rules transfer to other railway are not permitted to substitute even Gr.”D” without approval of G.M. According to the union, workman was refused to give work at his new place and given lay-off i.e. illegal, unfair and prohibited U/s 25-C of the I.D. Act and prayed that, Court adjudicates award for reinstatement of the workman, who was terminated from service, unfair dismissal U/s 7-a & 10-A of the I.D. Act. They also prayed that, workman be reinstated with 50% of back wages U/s 25-N of the I.D. Act.

10. **Point of determination:**

- i. Whether termination notice issued by the Railway to the workman is legal and justified?
- ii. Whether the workman is entitled for any relief?

Reasons for decision:

11. On the basis of Indian Railway Establishment Rule Volume-I Chapter XV, Rule 76-A of Industrial Dispute Central rules – 1957, Registers & Retrenchment laid down statutory provision of Railway Board’s Order under Master Circular 48, Railway Board’s Order dated 30.09.2015 RBE No. 119/2015, Case Ajaypal Singh Vs Haryana Warehousing Corporation (2015) 6 SCC 321, Divisional Railway Manager Vs. Presiding Officer Cheenai W.P. No. 23044 & 24473/2006 Date of decision 12.01.2011 and Tapash Kumar Paul Vs. BSNL Civil Appeal No. 4980/2014 date of order 28.01.1947, argued that, termination of workman without any rules and regulation, which is illegal and contrary to the law U/s 25-F and 27-N of the I.D. Act. So, their workman is entitled to reinstatement with full back wages. They also argued that, all right and privilege are available even to temporary workers. He also argued that, workman devoted with sincerity and honesty without break and no fault on his part. That argument was denied by the management i.e. Party No, 1 and 5. Now I want to see the evidence.

12. The workman, Pawan Singh Thakur (PW-1) admitted in para 14 of his cross-examination that, he was terminated on 08.10.2001 by the memorandum issued by the management. He also admitted that, notice of termination is on record, but he did not challenge this notice before any authority in form of representation in writing, but he made oral request to the Chief Personal Officer and General Manager. They assured that, they would appoint him again, if vacancy would available in future, but Railway did not appoint him. He also admitted that, after approval of the General Manager of the Railway, he was posted with Dy. Chief Engineer (Construction), Shri Virendra Kumar as Bunglow Peon. He denied that, he was appointed on purely temporary basis. According to him, he was supposed to be transferred with Shri Virendra Kumar to Kolkata in the year of 2001, but Virendra Kumar orally instructed him to take leave for few days and assured him to join after few times. In this way, this witness remained unrebutted in his cross-examination. Now I want to see the management’s evidence.

13. On behalf of the Railway, Shri N.N. Rao Acharya was examined to support the defence taken in W.S. He admitted that, workman was appointed as a Bunglow Peon attached to Shri Virendra Kumar as a temporary basis as substitute. He also admitted that, his appointment was approved by Railway General Manager. After appointment, workman was examined by Medical Expert as per procedure. He also admitted that, Medical Fitness Certificate was issued by the appropriate authority, but according to him, he did not file any original paper regarding service record of the workman, in support of para 5 & 8 of his evidence of affidavit. According to him, original papers are not available, but he admitted that, Xerox copy of the appointment letter shows that, he was appointed as a Bunglow Peon, but he is not in position to say that, when he was terminated i.e. whether he had worked for more than one year or not? He is also not in position to say about the Xerox copy of the Muster Roll, which was produced by the petitioner or any disciplinary proceedings against the petitioner. In this way, he gave a statement without full knowledge. Thus, his statement did not highlight actual proceedings against the workman.

14. On the contrary, workman filed Xerox copy of Identity Card, Privilege Pass, and Medical Facilities Card for himself and his family at Railway Hospital. Workman also mentioned the date regarding his appointment, medical examination, transfer to Kolkata, notice and order of termination, but management did not factually denied these dates and occurrence by reliable evidence. In this way, workman’s evidence appears to be more reliable than management’s evidence. After perusal of the pleadings of the management, it appears that, according to them, “Applicant had not acted in manner, in which he was supposed to perform his duty” in para 7 of W.S. In same para, they asserted that, “The workman discharged his duty as Substitute Bunglow Peon (now post is identified that TADK-Telephone Attendant-cum-Dak Khalasi)” i.e. he was interested to take family work rather than official work from the workman or he indulged to misuse the workman in taking personal work. So, it appears that, officer was angry after one year from the workman

and he wrote against him, which was not communicated to him. On the contrary, the workman trusted with the officer. In my opinion, that comes under the purview of unfair labour practice.

15. The workman was appointed with the approval of the General Manager, but notice of termination was issued by the lower rank officer namely Chief Administrative Officer (Construction). It is against the principles of natural justice. In my opinion, that practice is not allowed to prevail in the eye of law. Now I want to see the argument raised by the management.

16. On behalf of the management, it was argued that, present union has no locus-standi, so statement of claim of this reference is not tenable. This argument was denied by the union. On perusal of the record, it appears that, present union is registered under Trade Union Act, 1926 and carrying no. NGP-4403 and workman was the member of this union. They filed Xerox copy of Registration of Trade Union and Membership Form of Pawan Singh Thakur. Management failed to indicate that, in which provision; this Trade Union is barred to raise such type of dispute. Union evidence supports their argument, but management evidence does not support their argument. Hence, in my opinion, this argument raised by the management is not sustainable.

17. Management raised a argument that, this reference is time bared by limitation, but union opposed this argument by saying that, they started their proceedings before the ALC(C) in the year 2002, but this reference has been received from Ministry on 25.02.2014 and amendment in reference has been made by the Ministry on 12.11.2018. According to the union, it is not fault on part of the workman and union, so they may not be punished for the fault of the Ministry. This Tribunal is bound to accept all references, which are made by the appropriate government U/s 10 of the I.D. Act. After considering the argument of both the parties, my humble opinion is that, genuine claim cannot be rejected on the basis of technicality, because Tribunal proceeding is quasi judicial. This principle held in case law, Stat of Mysore Vs. Shivabarappa Shivappa Mokapur AIR 1963 SC 375. So, this argument of the management is not sustainable.

18. On behalf of the management, it was argued that, Chief ADMN Officer (C) GRC, Garden Reach Kolkata has not been made a party, so workman's claim is rejected on the ground of non-joinder of necessary party, but Ministry has amended the reference by Corrigendum dated 12.11.2018 and "The Chief Administrative Officer, Garden Reach, Kolkata-43" has been made a party No. 5. This Tribunal issued notice to the above party and they filed their W.S. So, this defect has been rectified by the Ministry, so in my opinion, this Tribunal has no jurisdiction, after amendment, reject or dismiss the reference. So, in my view, management's argument is not sustainable.

19. On behalf of the Party No. 5, it was argued that, (Para No. 6-c of W.S.) actual cause of action occurred in South Eastern Railway, Garden Reach Road, Kolkata, so this Tribunal has no jurisdiction to decide this matter. This argument was denied by the union as asserted that, workman was appointed at Nagpur and transferred to Bilaspur and Kolkata. Heard both parties on this point of argument, on perusal of the record, it appears that, last pay was drawn from Garden Reach Kolkata, notice of termination was issued by the Railway on 08.10.2001 at the address of Nagpur. Workman is also residing at Nagpur. From the very beginning Railway contested this case by filing W.S. Railway is very big organization; they have their offices at different places. They have full of resources, they have also sufficient staff and legal advisors.

On behalf of the union, it was argued that, in the year of 2001, South East Central Railway was having its Head Quarter at Kolkata and Nagpur came in that division. After that, in the year 2003, this division was divided into three parts, so, workman's case is based on the year 2001, so this Tribunal has jurisdiction. **This fact was not denied by the management.**

Section 11 of I.D. Act prescribes the power and procedure in conduction of reference matter, in which it is mentioned that, "Tribunal shall follow such procedure as the arbitrator or other authority concerned may think fit". In my humble opinion, on the basis of technicalities of law, genuine claim cannot be rejected, poor worker are fighting in Labour Court for their legal rights, which are denied by prosperous employer. If alternative argument is accepted, then case may be transferred to the CGIT, Kolkata, 18 years have already been lapsed, next CGIT also requires some time for decision, so in my opinion, relief will be postponed on technical ground for further period of two or three years. On the contrary starving workman will suffer huge expences and time without job. Moreover, Railway has sufficient skilled manpower, time and sufficient source to present their case before this Tribunal, so in my humble opinion, management's argument is not sustainable. Principles laid down in the above case laws:-

- i. "In case law Division Railway Manager, Hon'ble Madras High Court in para No. 11 and 12, on the basis of (2010) 2 SCC 623 Chaitanya Prakash Vs. H. Omkarappa, (1974) 2 SCC 831 Samsher Singh Vs. State of Punjab and (1999) 3 SCC 60 Dipti Prakash Banerjee Vs. Satvendra Nath Bose, referred that, "An order of termination during the period of probation, on the ground of the performance not being satisfactory, It was pointed out therein that the employer advised the employee to improve his performance".
"If finding were arrived at in an inquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as founder on the allegations and will be bad..... In such a circumstance, the allegations would be a motive and not the foundation and the simple order of termination would be valid".
- ii. In Tapash Kumar case, Hon'ble Supreme Court held that, "A court may pass an order substituting an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot

easily be measured in terms of money. With the passing of an order which has the effect of severing the employer-employee relationship.....Not only the employee concerned, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life.....The denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the employee concerned and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments”.

- iii. In para 23 of Tapash Kumar case, Hon’ble Supreme Court held that, “Termination may well amount to unfair labour practice. In such circumstances reinstatement being the normal rule, it should be followed with full back wages. Articles 41 and 43 of the constitution would assist us in reaching a just conclusion in this respect”.
- iv. In para 9 of Ajay Pal case, Hon’ble Punjab & Haryana High Court, on the basis of Ajaypal Singh Vs. Haryana Warehousing Corporation 2015(6) SCC 321, Krishan Singh Vs. Executive Engineer, Haryana State Agricultural Marketing Board 2010 (3) SCC 637 and Harjinder Singh Vs. Punjab State Warehousing Corporation 2010 (3) SCC 192, held that, “In that case selection and appointment was in accordance with Articles 14 and 16 of the Constitution of India therefore, the Supreme Court has directed for reinstatementManaging Director of respondent-Bank side track the constitutional provisions while appointing the petitioner.....has no right to seek for reinstatement”.
- v. In Senior Manager, First Flight Courier, Hon’ble Punjab & Haryana High Court held that, “Appropriate government always depends upon the facts and circumstances of each case.....the action of the appropriate government i.e. Chandigarh Administration has not been challenged by way of separate writ petition.....Labour Court, Chandigarh was not even competent to transfer the dispute to the Labour Court, Ludhiana”.
- vi. In Senior Manager, First Flight Courier, Hon’ble Punjab & Haryana High Court held that, “No prejudice is going to be caused to the petitioner, if the Labour court, Chandigarh adjudicates the Industrial dispute between.....The Labour Court, Chandigarh, rightly concluded that since part of cause of action arose at Chandigarh office of the petitioner, it has jurisdiction to adjudicate upon the reference.....the reference that has been made by the appropriate government, has become absolute”.
- vii. In para 3 of the Railway Board’s circular No. E(D&A) 2012 RG6-34 dated 30.09.2015,” A lower authority who has merely issued/signed the order regarding appointment/promotion which has been ordered by a higher authority, is not competent to impose the penalty or dismissal, removal or compulsory retirement from service on such Railway servant. Such action is not only violative of the RS (D&A) Rules but also unlikely to withstand judicial scrutiny”.

20. In case law--- Delhi Transport Corp. Vs. Ombir Singh 2017 LLR 252, Hon’ble Lordship held that “Where principles of natural justice are not being complied with, then in such cases, compensation ought to be granted even if termination of service is found to be valid”. On the basis of principle laid down in Engineering Laghu Udhog Employees Union vs Judge, Labour Court and Industrial Tribunal & others – (2003) 12 SCC 1 in which it was held that:- “no difference whether the matter comes before the tribunal for approval under S.33 or on a reference under S.10 of the Industrial Dispute Act, 1947. In either case if the enquiry is defective or if no enquiry has been held as required by Standing Orders, the entire case would be open before the tribunal and the employer would have to justify on facts as well that its order of dismissal or discharge was proper.” “A defective enquiry in our opinion stands on the same footing as no enquiry and in either case the tribunal would have jurisdiction to go into the facts and the employer would have to satisfy the tribunal that on facts the order of dismissal or discharge was proper.” These principles are also laid down by Hon’ble Supreme Court in case laws- Punjab Urban Planning & Development authority Vs. Mandip Singh (2016) 7 SCC-571, UPSRTC Vs. Gopal Shukla (2015) SCC 603, Sanjay Singh Vs. National Seed Corporation (2017) 13 SCC 269, V.D. Vegad Vs. State of Gujarat (2017) 2 SCC 508 and Angikr Oriental (Arbic) Higher Secondary School Vs. A. Harnoon (2017) 2 SCC 510.

21. Judging the present case in hand with the touch stone of the principles as mentioned above, as I observed that, the appointment of the workman, Shri Pawan Singh Thakur is legal and proper. He worked for more than one year i.e. he had completed 240 days in one calendar year. I also observed that, notice dated 08.10.2001 is illegal, because it is not supported by any document and I also observed that, Medical Board or Medical Agency did not declare the workman unfit for his job. I also observed that, part of the cause of action arose in the jurisdiction of this Tribunal. This Tribunal has no power to transfer the reference. Both the parties agreed that, they would not challenge the reference order dated 25.02.2014 and Corrigendum dated 12.11.2018, before the Hon’ble High Court in Writ jurisdiction i.e. challenge the validity of the reference. I also observed that, appointment of workman was made for the post of TADK-Telephone Attendant-cum-Dak Khalasi but Mr. Virendra Kumar, Dy. Chief Engineer wanted to take different works, but it also appears that, workman’s sympathy and devotion to the above officer remained even at last moment.

22. Party No. 5, The Chief Administrative Officer, Garden Reach, Kolkata filed W.S., but did not produce any evidence or documents i.e. opportunity of production of evidence was given to the Party No.5, Garden Reach Kolkata, but they did not avail. Neither they prayed for adjournment nor showed any difficulty to produce evidence. In my

opinion, management did not prejudice in conduction of Tribunal proceedings at Nagpur. The Party No. 3 is a registered Trade Union and workman was their member. Both are parties in this case. I also observed that, delay is not on the part of union or workman, so in my humble opinion, workman proved his case, but he is not entitled for full back wages, because in prayer clause of rejoinder, he prayed for 50% of back wages. So, in my opinion, termination order of Pawan Singh Thakur is illegal and based on unfair labour practice. He is also entitled for reinstatement with 50% of his back wages from the date of his termination. The management/Railway may recover this amount from the defaulting officer, Shri Virendra Kumar or The Chief Administrative Officer, Garden Reach, Kolkata or any officer, who were indulged in this wrong proceeding. Hence, it is ordered:-

ORDER

The action of the management of South East Central Railway, Nagpur in issuing the termination notice to Shri Pawan Singh Thakur, Bungalow Peon to Dy. C.E. (Con.) Bilaspur is not just, fair & legal. The workman is entitled for reinstatement with 50% of his back wages from the date of his termination. Management, Party No. 1 & 5 should comply the order within one month from the date of publication of this award in official gazette, failing which, workman is entitled to full future wages and will entitled for interest of 6% per annum from the date of dues amount. The workman is not entitled for any other relief.

S. S. GARG, Presiding Officer

नई दिल्ली, 17 जून, 2019

का.आ. 1055.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, अजमेर के पंचाट (संदर्भ संख्या 10/17) को प्रकाशित करती है जो केन्द्रीय सरकार को 17.06.2019 को प्राप्त हुआ था।

[सं. एल-12012/92/2016-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 17th June, 2019

S.O. 1055.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 10/17) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Ajmer as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 17.06.2019.

[No. L-12012/92/2016-IR (B-1)]

B. S. BISHT, Under Secy.

अनुबंध

श्रम न्यायालय एवं औद्योगिक न्यायाधिकरण, अजमेर

पीठासीन अधिकारी—श्री एस.एन.टेलर, आर.एच.जे.एस

प्रकरण संख्या— सी आई टी आर 10/17

सी आई एस नं. 46/2017

रेफरेंस संख्या— एल-12012/92/2016 (आई आर(बी-1) दिनांक 17.10.17

श्री लाल मोहम्मद पुत्र श्री बृजकिशोर, 124, राजा आश्रम के सामने, क्रिश्चियन कॉलोनी, मदार नाडी, अजमेरप्रार्थी

बनाम

मै. टाईगर-4 सिक्युरिटी एंड डिटैक्टिव इंडिया प्रा0 लि0 7, लोवर ग्राउंड फ्लोर, एल एस सी बी-1, वसंत कुंज, न्यू देहली 110070
.....अप्रार्थी

उपस्थिति

प्रार्थी की ओर से : श्री फिरोज खान, अधिवक्ता ।

अप्रार्थी के विरुद्ध : एकपक्षीय कार्यवाही ।

दिनांक 05.3.2019

अवार्ड

1. श्रम विभाग, केंद्र सरकार की ओर से डेस्क ऑफिसर के आदेश क.एल-12012/92/2016(आई आर(बी)-1) दिनांक 17.10.17 द्वारा इस श्रम न्यायालय को अधिनिर्णयार्थ निम्न विवाद निर्देशित किया गया है:-
"Whether the action of the management of State Bank of India, Ajmer & M/s.Tiger 4 Security and Detective India Pvt.Ltd. New Delhi, in terminating the service of Shri Lal Mohd.S/0 Shri Brju Kishore w.e.f.10-11-2014 is legal and justified ? 2- Whether the demand of the concerned workman for payment of three months wages towards compensation for financial and mental hardship caused to him by the action of the management, is legal and justified? If yes, than to what relief the concerned workman is entitled to?"
2. तलब किये जाने पर प्रार्थी द्वारा स्टेटमेंट ऑफ क्लेम प्रस्तुत किया जाकर उसमें अभिवचन किये गये हैं कि उसने अप्रार्थी संस्थान में बतौर सुरक्षा गार्ड दि.1.9.13 से कार्य करना शुरू किया गया एवं उसे दि.11.10.14 को अप्रार्थी संस्थान द्वारा श्रम विधि के उल्लंघन में जुबानी तौर पर सेवामुक्त कर दिया गया । उसने प्रतिवर्ष 240 दिन से अधिक कार्य किया है । उसका वेतन सेवामुक्ति के समय पांच हजार रुपये प्रतिमाह था एवं उसके विरुद्ध कोई आरोप नहीं रहे हैं तथा उसने अपनी निष्ठा व ईमानदारी से कार्य किया है । दि. 8.10.14 को उसने एस बी आई ए टी एम लोको वर्कशॉप अजमेर पर दोपहर दो बजे से रात्रि दस बजे तक ड्यूटी दी थी। दस बजे के बाद में अन्य गार्ड दिनेश कुमार तैनात हुआ था जिसने ए टी एम मशीन मय कमरे, ए सी, लाईट, मोबाईल सही संभलाकर ड्यूटी रजिस्टर में हस्ताक्षर किये थे जो सी सी टी वी कैमरे में रिकॉर्ड है । दि. 9.10.14 को केयर टेकर द्वारा सूचना दी गयी कि उक्त ए टी एम का शटर नीचे किया हुआ है कैमरा नहीं है नाईट ड्यूटी गार्ड ड्यूटी पर नहीं था जिसे फोन कर बुलाया गया जिसने अपनी गलती स्वीकार की । प्रार्थी की कोई गलती नहीं थी। प्रार्थी द्वारा सहायक श्रम आयुक्त केंद्रीय में शिकायत की गयी । अंत में प्रार्थी की उक्त सेवामुक्ति अनुचित एवं अवैध घोषित करते हुए प्रार्थी को पूर्व पूर्ण वेतन परिलाभ सहित सेवा में बहाल किये जाने की प्रार्थना की गयी है ।
3. अप्रार्थी को तलब किये जाने पर बावजूद तामील के उसकी ओर से किसी के भी उपस्थित नहीं आने पर दि. 30.1.2019 को अप्रार्थी के विरुद्ध एकपक्षीय कार्यवाही अमल में लायी गयी है ।
4. साक्ष्य एकतरफा में प्रार्थी द्वारा स्वयं की साक्ष्य ए डब.1 लाल मोहम्मद के तौर पर प्रस्तुत किये जाते हुए दस्तावेजी साक्ष्य में प्रदर्श डब.1 व डब.2 आईडेंटिटी कार्ड फोटो प्रति में, प्रदर्श डब.3 प्रार्थी द्वारा समझौता अधिकारी के समक्ष पेश की गयी शिकायत, प्रदर्श डब.4 अप्रार्थी द्वारा प्रस्तुत जवाब, प्रदर्श डब.5 प्रार्थी का जवाबुल जवाब, प्रदर्श डब.6 प्रार्थी का प्रार्थना पत्र, प्रदर्श डब.7 समझौता कार्यवाही की फोटो प्रति पेश कर प्रदर्शित करवाये गये हैं ।
5. बहस एकपक्षीय सुनी गयी । विद्वान अधिवक्ता प्रार्थी के स्टेटमेंट ऑफ क्लेम के तथ्यों के दोहराव के साथ तर्क रहे हैं कि स्वयं अप्रार्थी द्वारा समझौता अधिकारी के समक्ष प्रस्तुत जवाब प्रदर्श डब.4 में अप्रार्थी संस्थान द्वारा प्रार्थी को हटाया जाना स्वीकार किया गया है तथा घटना के बाबत अनुसंधान लंबित होना भी वर्णित किया गया है । बिना निष्कर्ष के एवं बिना प्रार्थी के विरुद्ध कोई जांच किये एवं बिना प्रार्थी के दोषी हुए प्रार्थी को सेवा से अप्रार्थी संस्थान द्वारा हटाया जाना विधि विरुद्ध है । प्रार्थी को सेवामुक्त किये जाने में श्रम कानूनों का उल्लंघन किया गया है । प्रार्थी को कोई रिट्रैचमेंट कंपेंसेशन या नोटिस नहीं दिया गया है । प्रार्थी की सेवामुक्ति अवैध है । रेफरेंस में प्रार्थी की सेवामुक्ति की दि. 10.11.14 अशुद्ध अंकित है जबकि यह दि. 11.10.14 है तथा यह अप्रार्थी संस्थान का समझौता अधिकारी के समक्ष प्रस्तुत अपने जवाब में स्वीकृत तथ्य भी है । अंत में प्रार्थी का स्टेटमेंट ऑफ क्लेम स्वीकार किया जाकर उक्त निर्देशित विवाद का अधिनिर्णय प्रार्थी के पक्ष में किये जाने की प्रार्थना की गयी है ।
6. प्रार्थी की ओर से दिये गये एकपक्षीय तर्कों के मददे नजर संबंधित विधि को विचार में लेते हुए पत्रावली का गंभीरतापूर्वक परिशीलन किया गया ।
7. प्रार्थी द्वारा अपनी एकपक्षीय साक्ष्य में प्रस्तुत मुख्य परीक्षा के शपथ पत्र में अपने अभिवचनानुसार ही तथ्य दर्ज करवाये गये हैं । प्रदर्श डब.2 आईडेंटिटी कार्ड की फोटो कॉपी से स्पष्ट है कि यह आईडेंटिटी कार्ड दि. 14.9.13 को अप्रार्थी संस्थान द्वारा प्रार्थी के हित में उसका पद केयर टेकर (सी टी) बताकर जारी किया जाना इसमें वर्णित है । जिसकी समाप्ति की तिथि दि. 13.9.14 से पहले से ही दि. 5.3.14 को दि. 5.2.15 तक के लिए दूसरा आईडेंटिटी कार्ड जिसकी प्रति प्रदर्श डब.1 है प्रार्थी के हित में अप्रार्थी संस्थान द्वारा जारी किया जाना प्रदर्श डब. 1 में वर्णित है । प्रदर्श डब. 3 शिकायत में प्रार्थी द्वारा वे ही तथ्य दर्ज किये गये हैं जो कि प्रार्थी ने अपने स्टेटमेंट ऑफ क्लेम में वर्णित किये हैं । प्रदर्श डब.4 जवाब में अप्रार्थी की ओर से दि.8.10.14 को एस बी आई ए टी एम लोकास वरशिप अजमेर ब्रांच का सी सी टी वी दि. 8.10.14 को चोरी हो जाना पाना तथा उससे संबंधित सभी तीन केयर टेकरों को नौकरी से हटा दिया जाना एवं कंपनी द्वारा मामले में कोई एफ आई आर अपने नियोजितों के विरुद्ध दर्ज नहीं करवाया जाना किंतु अन्वेषण लंबित होना वर्णित है । प्रदर्श डब.5 जवाबुल जवाब प्रार्थी में प्रार्थी द्वारा अप्रार्थी के उक्त कथनों के खंडन में तथ्य वर्णित किये गये हैं । प्रदर्श डब.6 प्रार्थी के प्रार्थना पत्र में माह अक्टूबर व नवंबर 2014 की वेतन राशि रु. 7151/-बकाया रहने जो प्राप्त हो जाने किंतु अप्रार्थी कंपनी के प्रतिनिधि के कहे अनुसार तीन माह के वेतन की क्षतिपूर्ति नहीं प्राप्त होने से उसे दिलवाने की मांग की गयी है । प्रदर्श डब.7 में असफल वार्ता बाबत कार्यवाही वर्णित है ।

8. प्रार्थी द्वारा अपने स्टेटमेंट ऑफ क्लेम के माध्यम से उक्त प्रकार अभिवचन किये गये हैं जिनके समर्थन में उसकी मौखिक साक्ष्य उसके मुख्य परीक्षा के शपथ पत्र में दर्ज है। प्रदर्श डब.1 व डब.2 आईडेंटिटी कार्ड की फोटो प्रतियों से प्रार्थी का अप्रार्थी संस्थान के यहां प्रार्थी द्वारा अपने अभिवचनों में बतायी गयी अवधि में बतौर केयर टेकर नियोजित होना प्रकट होता है। अप्रार्थी की ओर से समझौता अधिकारी के समक्ष प्रस्तुत जवाब प्रदर्श डब.4 से यह स्पष्ट है कि एस बी आई ए टी एम लोकल वरशिप अजमेर ब्रांच से सी सी टी वी कैमरे चोरी हो जाना दि.8.10.14 को पाये जाने पर प्रार्थी सहित तीन केयर टेकरों को हटाया जाना तथा अप्रार्थी संस्थान द्वारा उनके विरुद्ध एफ आई आर दर्ज नहीं करवाया जाना इसमें वर्णित किया गया है। इसमें अन्वेषण भी लंबित होना वर्णित है। प्रार्थी द्वारा अपनी साक्ष्य में उक्त घटना में स्वयं का कोई दोष नहीं होने बाबत तथ्य दर्ज करवाये गये हैं जिस मौखिक साक्ष्य का पत्रावली पर किसी प्रकार से खंडन नहीं है तथा प्रार्थी को उक्त घटना के संबंध में कोई आरोप पत्र दिया गया हो व जांच की गयी हो व जांच के पश्चात् दोषी पाये जाने पर प्रार्थी को सेवा से हटाया गया हो ऐसा कुछ भी पत्रावली से प्रकट नहीं होता है। प्रार्थी को यदि उक्त घटना में दोषी मानते हुए आरोपों के आधार पर हटाया गया है तो प्रार्थी के विरुद्ध जांच में आरोप प्रमाणित होना अप्रार्थी संस्थान को प्रकट करना था किंतु अप्रार्थी संस्थान बावजूद तामील न्यायालय में उपस्थित नहीं हुआ है तथा उसके विरुद्ध उक्त प्रकार एकपक्षीय कार्यवाही अमल में लायी गयी है। ऐसी परिस्थिति में प्रार्थी द्वारा प्रस्तुत मौखिक व दस्तावेजी साक्ष्य का किसी प्रकार से खंडन नहीं होता है जिस कारण प्रार्थी की मौखिक व दस्तावेजी साक्ष्य पर अविश्वास किये जाने का कोई आधार पत्रावली पर नहीं है। प्रार्थी द्वारा रखे गये तथ्यों को प्रदर्श डब.4 अप्रार्थी द्वारा समझौता अधिकारी के समक्ष प्रस्तुत जवाब के तथ्यों एवं प्रार्थी की शिकायत की प्रति प्रदर्श डब.3 तथा जवाबुल जवाब की प्रति प्रदर्श डब.5 के सार के साथ पढ़ने से प्रार्थी की सेवामुक्ति दि.10.11.14 के बजाय दि.11.10.14 की प्रकट होती है तथा प्रार्थी की ओर से दिये गये इस तर्क को नहीं माने जाने का कोई कारण नहीं है कि रेफरेंस में प्रार्थी की सेवामुक्ति की तिथि दि. 11.10.14 के स्थान पर दि.10.11.14 अशुद्ध अंकित है जिसे शुद्ध पढ़ने में कोई दोष नहीं है। प्रार्थी को उक्त सेवामुक्ति पर कोई रिट्रैचमेंट भत्ता व नोटिस भी दिया जाना प्रकट नहीं है। समस्त परिस्थितियों में प्रार्थी की अप्रार्थी संस्थान द्वारा की गयी सेवामुक्ति अवैध ही प्रकट होती है। परिणामस्वरूप प्रार्थी द्वारा उक्त सेवामुक्ति पर उक्त विवेचित प्रदर्श डब.6 प्रार्थी के प्रार्थना पत्र में वर्णितानुसार तीन माह के वेतन की मांग बतौर क्षतिपूर्ति किया जाना वैध एवं न्यायसंगत है तथा प्रार्थी अपने प्रार्थना पत्र प्रदर्श डब.6 अनुसार ही तीन माह का वेतन अप्रार्थी संस्थान से बतौर क्षतिपूर्ति प्राप्त करने का अधिकारी पाया जाता है। यद्यपि उक्त निर्देशित विवाद में स्टेट बैंक ऑफ इंडिया, अजमेर के मैनेजमेंट की कार्यवाही का भी अंकन है किंतु उक्त बैंक प्रकरण में पक्षकार नहीं है न ही प्रार्थी द्वारा उसके पक्षकार के तौर पर जोड़े जाने की प्रार्थना की गयी है। ऐसी परिस्थिति में प्रार्थी अपनी उक्त मांग पूर्ति अप्रार्थी संस्थान से ही करवाये जाने का अधिकारी पाया जाता है तथा इसी अनुसार प्रार्थी का उक्त स्टेटमेंट ऑफ क्लेम विरुद्ध अप्रार्थी एकपक्षीय मय खर्चा स्वीकार किया जाते हुए उक्त निर्देशित विवाद को अधिनिर्णीत किया जाना न्यायोचित है।

आदेश

9. अतः प्रार्थी का स्टेटमेंट ऑफ क्लेम विरुद्ध अप्रार्थी एकपक्षीय मय खर्चा उपरोक्तानुसार स्वीकार किया जाकर उक्त निर्देशित विवाद प्रार्थी के पक्ष में व अप्रार्थी के विरुद्ध एकपक्षीय इस प्रकार अधिनिर्णीत किया जाता है कि अप्रार्थी संस्थान द्वारा प्रार्थी श्री लाल मोहम्मद पुत्र श्री बृज किशोर को दि.11.10.14 से सेवामुक्ति किया जाना अनुचित एवं अवैध है तथा प्रार्थी श्रमिक द्वारा तीन माह के वेतन की बतौर क्षतिपूर्ति अप्रार्थी संस्थान से की गयी मांग वैध व न्यायसंगत है। परिणामस्वरूप प्रार्थी अप्रार्थी संस्थान से तीन माह का वेतन बतौर क्षतिपूर्ति प्राप्त करने का अधिकारी है जो अप्रार्थी प्रार्थी को अविलंब अदा करे। तीन माह में उक्त भुगतान अप्रार्थी द्वारा नहीं किये जाने पर प्रार्थी अप्रार्थी से नौ प्रतिशत वार्षिक साधारण दर से ब्याज भी प्राप्त करने का अधिकारी होगा।

एस. एन. टेलर, न्यायाधीश

नई दिल्ली, 17 जून, 2019

का.आ. 1056.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार न्यू इंडिया एश्योरेंस कंपनी लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या 121/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 17.06.2019 को प्राप्त हुआ था।

[सं. एल-17012/18/2004-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 17th June, 2019

S.O. 1056.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 121/2005) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of New India Assurance Company Limited and their workmen, received by the Central Government on 17.06.2019.

[No. L-17012/18/2004-IR (B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR
NO. CGIT/LC/R/121/2005**

Shri Shiv Prasad Chourasiya,
Gram kotma, Balpurwa Road,
Distt. Shahdol (MP)

...Workman

Versus

Divisional Manager,
New India Assurance Company Limited,
Near Hotel Surya,
Shahdol (MP)

...Management

AWARD

Passed on this 15th day of May 2019

1. As per letter dated 21.10.2005 by the Government of India, Ministry of Labor, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of Industrial Disputes Act 1947, hereinafter referred to by the word 'Act', as per Notification No.L-17012/18/2004-IR(B-I). The dispute under reference relates to:

“Whether the action of the management of the Divisional Manager, New India Assurance Company Limited (MP) in terminating the services of Shri Shiv Prasad Chourasiya is legal and justified? If not, what relief the workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party workman filed statement of claim. According to workman, he was initially appointed as peon w.e.f. 1-9-93 and continued in service as peon till 17-7-03 for a period of 13 years hence acquired the status of regular employee but the management kept him continuing as a daily rated employee by not regularizing his services without any legal justification. Management terminated his services without enquiry, notice or compensation which is against provisions of Section 25-F of the 'Act'. Management further violated provision of Section 25-G & H of the 'Act' as well as Rule 77,78 of ID(Central) Rules 1957 which amounts to victimization and unfair labor practice as well as illegal retrenchment. Workman is unemployed after termination. Accordingly, the workman has prayed to answer the reference in his favour by directing the management to reinstate him on the post of peon with all back wages and benefits declaring his termination against law.
3. Case of the management is that firstly, the reference is vague because no particulars have been given w.r.t. alleged services put by the claimant in the reference. In absence of these particulars, no adjudication is possible. Also, it has been pleaded that there is no relationship of employer employee between any point of time hence the workman is not a workman as defined in the 'Act'. According to management, there are certain rules and regulations regarding appointment on vacancies. The workman was simply a daily wager engaged according to exigency of work for short period after intervals. He was not appointed as per rules against any vacancy hence he cannot claim regularization. He was engaged for few hours intermittently on casual basis like cleaning of office and was paid on daily basis. It is further the case of management that on 27-9-97, workman applied for license as Insurance Agent which was granted and he was granted license No. NIA/12/SDL/0073 up to 28-10-2000 & a certificate to this effect was issued by the Branch office at Shahdol. This license was renewed from time to time and certificates were issued between the period 29-10-97 to 28-10-03 hence workman cannot be said to be an 'workman as defined in the 'Act'. Between this period, the casual work done by claimant prior to 29-10-97 was paid by the company. Legal pleas regarding non-application of Section 25-F,G&H & Rule 77 & 78 of I.D.(Central) Rules were also taken by the employer. Accordingly, it was prayed that reference be answered against the workman.
4. Workman filed and proved copy of ledger book and payment vouchers from 1997 to 1999 which have been marked Exhibit W-1 & 2 respectively.
5. The workman has examined himself on oath as witness.
6. Management filed and proved agency allotment letter by the management company dated 29-10-97. License to act as an agent dated 29-10-97, letter regarding payment of commission sent to agents including the present workman dated 8-1-2002, certificates after renewal of agency license issued to the workman on 9-4-2003 and

other date. License regarding agency issued on 9-6-03 agent master details containing the name of the present workman as agent of the company maintained by the management and marked Exhibit M-1 to 9 respectively. Management has examined its witness Shri Bhubeneshwar Choudhury ,Dy.Manager on oath.

7. I have heard argument of Mr. K.B. Singh, Advocate on behalf of workman and Shri A.K.Shashi, Advocate on behalf of management and have gone through the record.

8. After perusal of record in the light o rival argument, following points come up in this case for determination-

(1) **Whether termination of the workman is justified in law?**

(2) **Relief to which the workman is entitled?**

9. Point for determination No.1-

Before entering into discussion, it is proper to refer to certain provisions which are being reproduced as follows-

Section 2(S)-

“**workman**” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
- (ii) who is employed in the police service or as an officer or other employee of a prison, or
- (iii) who is employed mainly in a managerial or administrative capacity, or
- (iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.]

Section 2(oo)

- (a) “**retrenchment**” means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include- (a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

3[(bb) termination of the service of the workman as a result of the on- renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or] (c) termination of the service of a workman on the ground of continued ill-health;]

Section 25-F:-

Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2[for every completed year of continuous service] or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government 3[or such authority as may be specified by the appropriate Government by notification in the Official Gazette.

25G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman.

25H. Re-employment of retrenched workmen.- Where any workmen are retrenched and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity 2[to the retrenched workmen who are citizens of India to offer themselves for re-employment, and such retrenched workmen] who offer themselves for re-employment shall have preference over other persons.

77. Maintenance of seniority list of workmen:-The employer shall prepare a list of all workmen in the particular category from which retrenchment is contemplated to be arranged according to the seniority of their service in that category and cause a copy thereof to be pasted on a notice board in a conspicuous place in the premises of the industrial establishment at least seven days before the actual date of retrenchment.

78. Re-employment of retrenched workmen:-(1) At least ten days before the date on which vacancies are to be filled, the employer shall arrange for the display on a notice board in a conspicuous place in the premises of the industrial establishment details of those vacancies and shall also give intimation of those vacancies by registered post to every one of all the retrenched workmen eligible to be considered therefor, to the address given by him at the time of retrenchment or at any time thereafter : Provided that where the number of such vacancies is less than the number of retrenched workmen, it shall be sufficient if intimation is given by the employer individually to the senior most retrenched workmen in the list referred to in rule 77 the number of such senior most workmen being double the number of such vacancies: Provided further that where the vacancy is of a duration of less than one month there shall be no obligation on the employer to send intimation of such vacancy to individual retrenched workmen:

1[Provided also that if a retrenched workman, without sufficient cause being shown in writing to the employer, does not offer himself for re-employment on the date or dates specified in the intimation sent to him by the employer under this sub-rule, the employer may not intimate to him the vacancies that may be filled on any subsequent occasion.] (2) Immediately after complying with the provisions of sub-rule (1), the employer shall also inform the trade unions connected with the industrial establishment, of the number of vacancies to be filled and names of the retrenched workmen to whom intimation has been sent under that sub-rule: Provided that the provisions of this sub-rule need not be complied with by the employer in any case where intimation is sent to every one of the workmen mentioned in the list prepared under rule 77.

The case of the workman is that he was employed as a peon from 1-9-93 to 17-7-03 and was terminated from service without notice or compensation or any enquiry whereas the case of the management is that he was never appointed against a vacancy. He was simply a daily wage called for duty as and when exigency of work required and was paid his wages as daily wage. Further that he was granted license on 29-10-97 on his application to work as an insurance agent on commission basis hence there was no relationship of employer employee between the parties on the date of alleged termination of services that is on 17-07-03. Thus this is not disputed by the management that workman was engaged between the period 1-9-93 to 29-10-97, the date when he was granted license as an agent of the company though according to management, he was a casual wage and was engaged according to availability of work from time to time for which he was paid. **The point arises for consideration is the relationship of employer employee may be as a casual labor continued up to 29-10-97 as stated by management or up to 17-7-03, as stated by him.** There is oral statement of the workman on one side and witness for management on the other side in support of their respective claims. Workman has filed and proved copy of ledger book which is petty cash expense register in which it has been shown that the workman was paid wage on daily basis for different dates for the period 1995 to 1997. Another document filed and proved by the workman is Exhibit W-2 which are payment vouchers in 93 pages which range from 7-7-97 to 14-9-99. They are of different amounts like Rs.40/- upto 1998, Rs.50/- in 1999 & thereafter Rs.100/- in 1999. Other sets of photocopy documents filed by workman are not admitted by management and not proved hence they cannot be read in evidence. On the other hand, management has filed Exhibit M-1 which is letter of management granting license to the workman as an Insurance Agent, other documents Exhibit M-2,3,4,5,6,7 & 8 are regarding renewal of license and payment of commission as agent. These documents specially Exhibit M-3 which is payment of commission of agents is of 18-1-2002 Exhibit M-4 & 5 are renewal of license dated 9-4-03. Exhibit M-6 is regarding payment of commission as agent dated 28-10-2000 & M-7 is renewal of license dated 9-6-03. Exhibit M-8 is also agent master details dated 7-1-2002, the name of present workman is mentioned in all these documents as agent.

10. Management has further filed and proved the agency license register which is maintained from 14-12-92 which is Exhibit M-9. Name of present workman finds mention in this register of agency. All these documents corroborate the statement of management's witness that since October 97, the workman was issued license for Insurance Agent and he started to work as Insurance Agent. There is no dispute on the point that Insurance Agent is not an employee of the employer, he is independent person who is granted license to act as Insurance Agent. He gets policies for the company and commission is paid to him for this. It is the case of workman in his statement of claim that he was in employment/engagement of the employers till 17-7-03 as a peon. Documents filed by the workman do not support his this allegation. Taking into consideration the evidence of the parties as discussed above, there is no occasion to believe the case of workman that he was in employment/engagement of employers till July 2003. Rather case of management that earlier he

was engaged as casual labo,r and in 1997 & thereafter he was granted license for Insurance Agent appears more reliable and acceptable. **Accordingly, the case of workman that he was in engagement/ employment of the employers till 17-7-03 is held not proved and accordingly his case that he was disengaged on 7-7-03 is also held not proved.** Hence, ther is no question of disengagement of the present workman on 17-07-03 arises. Learned counsel for workman has referred to case **Rajkumar vs Director of Education and others (2016)6-SCC-541** but it is of no help to the workman because facts are different.

Point No.1 is answered accordingly.

11. Point No.2-

In the light of finding recorded earlier in this judgment, workman is held not entitled to any relief.

12. In the result, award is passed as under:-

- (1) The action of the management of the Divisional Manager, New India Assurance Company Limited (MP) in terminating the services of Shri Shiv Prasad Chourasiya is legal and justified.
- (2) Workman Shri Shiv Prasad Chourasiya is not entitled to any relief.

Date : 15.5.2019

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 17 जून, 2019

का.आ. 1057.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या 51/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 17.06.2019 को प्राप्त हुआ था।

[सं. एल-12012/08/2012-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 17th June, 2019

S.O. 1057.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.51/2012) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of india and their workmen, received by the Central Government on 17.06.2019.

[No. L-12012/08/2012-IR (B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/51/2012

Shri Yogesh Kumar Yadav,
S/o Shri GaneshLal Yadav,
Handipara, Near Ghanshyam Temple.
Raipur (CG)

Versus

Branch Manager,
State Bank of India,
Motibagh Branch,
Raipur

Zonal Manager,
State Bank of India,
Byron Bazar, Raipur (CG)

... Workman

... Management

AWARD**Passed on this 9th day of May 2019**

1. As per letter dated 22-3-2012 by the Government of India, Ministry of Labor, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947, hereinafter referred to by word 'Act' as per Notification No.L-12012/08/2012-IR(B-I). The dispute under reference relates to:

“Whether the action of the management of Branch Manager, State Bank of India, Motibagh, Raipur in terminating the services of Shri Yogesh Yadav w.e.f. February 2010 is legal and justified? To what relief the workman is entitled?”

2. According to the workman, he was appointed as peon/ messenger by the Bank in Moti Nagar Branch, Raipur on 31-7-02 and was working with all sincerity and satisfaction of all concerned till February 2010 when his services were orally terminated by the management (Opposite Party No.2) by an oral order without giving him any notice or compensation. He had completed 240 days every year including the year preceding the date of his disengagement. He raised a dispute with Assistant Labor Commissioner. After Failure of Conciliation, a reference was sent by a Government to this Court. According to the workman, he was paid wages firstly at the rate of Rs.85/- per day and Rs.165/- per day. Thereafter and was also paid bonus for the said period. Accordingly, it has been alleged that the termination of the workman is against Section 25-F of the Act hence against law. Workman has prayed for a relief of his reinstatement and regularization with full wages setting aside his termination holding it illegal.

3. Management has admitted the case of workman with a caveat that he was not appointed according to rules against any vacancy. He was simply engaged for the work of cleaning and providing drinking water in the Bank as a casual labor on daily basis he was paid Rs.85/- per day in the beginning which was enhanced to Rs.165/- per day. He never completed 240 days in continuous engagement in any year including the year preceding the date of his disengagement. Hence his disengagement is not against Section 25-F of the Act. Accordingly, it has been prayed that the reference be answered against the workman.

4. In his rejoinder, workman has further reiterated his case as stated in claim, denying the pleadings of management.

5. At the stage of evidence, workman has examined himself and his witness Laxmi Narayan Yadav on oath. He has not proved any document in his statement.

6. Management has examined on oath Chief Manager Sanjay on oath. Workman has filed document photocopy, reply of management filed before ALC and information given by the management in RTI Act (Copy), both admitted by management. (Office is directed to mark exhibit as per rules) as these two documents. Rest of the photocopy of documents filed by workman have been denied by management. they have not been proved even by secondly evidence hence cannot be read into evidence.

7. At the stage of argument, learned counsel for workman was not present hence his oral argument were not heard. He filed written argument which is on record. Learned counsel for management Shri S.K.Yadav submitted his argument and has also filed written argument which are also part of record. I have perused the written argument as well as the record. Following points come out for determination in the present case-

(1) Whether the action of the management of Branch Manager, State Bank of India, Motibagh, Raipur in terminating the services of Shri Yogesh Yadav w.e.f. February 2010 is legal and justified?

(2) Relief to which the workman is entitled?

8. Point for Determination No.1-

Admitted between the parties is the fact that the workman was in the engagement of management since 31-7-2002 to February 2010 in Motibagh branch, Raipur of the Bank. According to the workman, he was appointed as peon/ messenger whereas the case of the management is that he was not appointed as peon or messenger rather he was engaged as the casual daily wager on daily basis for cleaning and servicing drinking water to the staff & visitors for which he was paid on daily basis. The rate of payment is not disputed between the parties. Though it has been pleaded by the management that the workman was never engaged for 240 days. This is also pertinent to mention here that when the factum of engagement is admitted by the management. It is further supported by statement of two witnesses and also that the period of engagement is also admitted by management Bank. It is further supported by statement of two witnesses from the side of workman, then it can be safely held that in the case in hand, the workman has successfully discharged his burden to prove his continuous 240 days in the year preceding date of his disengagement. Now the onus shifts on the management to rebut the fact. Sole management witness is admitted in his cross examination that he was not posted in the said Branch during the period 2002 to 2010 which is the relevant period in the case in hand .

9. Workman has specifically stated that he received remuneration continuously for the said period up to February 2010 which is admitted by management and also received bonus for the said period which is admitted by management in their pleadings. Management's witness has expressed his ignorance regarding this payment which is not a fresh rebuttal on this point. Principal of law laid down in case **State Bank of Bikaner & Jaipur versus Om Prakash Sharma (2006)5 SCC-123, Range Forest Officer versus S.T.Hadimani (2002)3SCC-25** and similarly other cases as mentioned in the written argument laid down that the initial burden to prove employment of 240 days is on the workman. In the case in hand keeping in view, the admission by management corroborated by the oral statement as well as Exhibit W-1 & W-2 as mentioned above, it can be safely held that the workman has discharged his burden to prove this fact of his continuous engagement for 240 days in the year preceding the date of his disengagement. Admitted is the fact between the parties that no notice of compensation was given to the workman on his disengagement. **Hence the disengagement of the workman in the case in hand is held against the provisions of Section 25-F of the Act and not justified in law.** Point No.1 is answered accordingly.

10. Point for Determination No.2-

In the light of the finding that the disengagement of the workman is not justified in law, the point further arises as to which benefit he is entitled to. Workman has sought firstly the relief of regularization and secondly reinstatement with backwages and benefits. It is established from the evidence on record that workman was not appointed against any vacancy hence he cannot be regularized against any vacancy. As regards next question, since his appointment was as a daily wager and also that his engagement was not by following rules, his reinstatement will also not be justified. Principal of law laid down in **Case BSNL versus Mansingh (2012)1SCC-558** by management can be referred to in this respect.

In the case of **Tapash Kumar Paul(2014)15SCC-313**, points to be considered while awarding compensation in lieu of reinstatement have been mentioned in Para-4 of the judgment which is reproduced as follows-

"It is no doubt true that a Court may pass an order substituting an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds viz. (I) where the industry is closed; (ii) where the employee has superannuated or going to retire shortly and no period of service is left to his credit; (iii) where the workman has been rendered incapacitated to discharge the duties and cannot be reinstated and / or (iv) when he has lost confidence of the Management to discharge duties. What is sought to be emphasized is that there may be appropriate case on facts which may justify substituting the order of reinstatement by award of compensation, but that has to be supported by some legal and justifiable reasons indicating why the order of reinstatement should be allowed to be substituted by award of compensation.

Though the workman has alleged that he has been unemployed since his disengagement, he has not corroborated his this allegation in his statement on oath hence keeping these facts in view, a lumpsum compensation of Rs.40,000 will meet the ends of justice in my view. **Keeping all the facts and circumstances of the cases in hand, lumpsum compensation of 40,000 will be just and proper.**

11. In the result, award is passed as under:-

- (1) The action of the management of Branch Manager, State Bank of India, Motibagh, Raipur in terminating the services of Shri Yogesh Yadav w.e.f. February 2010 is illegal.
- (2) The workman Shri Yogesh Yadav is entitled to compensation Rs.40,000/-.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization

Dated:9.5.2019

P.K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 17 जून, 2019

का.आ. 1058.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम मध्य रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या 6/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 17.06.2019 को प्राप्त हुआ था।

[सं. एल-41012/96/2016-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 17th June, 2019

S.O. 1058.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 6/2014) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of West Central Railway and their workmen, received by the Central Government on 17.06.2019.

[No. L-41012/96/2016-IR (B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM -LABOUR COURT, JABALPUR

NO. CGIT/LC/R/6/2014

Shri Ramratan Prasad,
S/o Shri Damodar Prasad,
R/o Village Badiy, Gopalpur,
Post Ramathpur, P.S.Sarmera,
Distt. Nalanda, Bihar

...Workman

Versus

Divisional Railway Manager,
West Central Railway,
Jabalpur (MP)

... Management

AWARD

Passed on this 13th day of May 2019

1. As per letter dated 9-1-2014 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of Industrial Disputes Act 1947, hereinafter referred to by the word 'Act' as per Notification No.L-41012/96/2016-IR(B-I). The dispute under reference relates to:

“Whether the action of Divisional Railway Manager, West Central Railway, Jabalpur in terminating the services of Shri Ram Ratan Prasad, Ex Casual Labour w.e.f. 19-7-84 was legal and justified? If yes, then what relief he is entitled to?”

2. According to the statement of claim, it is case of workman that he worked under the employer in different spells of period from 20-4-1979 to 18-7-84 as casual labour. He was not given any work and his services were terminated by oral order whereas similarly situated labors were continued in service who were regularized later on and are working at present. After oral termination, he raised dispute before A.L.C. After failure of conciliation proceedings, reference was made to this court for Award. According to the workman, no termination notice was served at any point of time before his termination nor was he given one months salary or compensation though he has been employed for the period 20-4-1979 to 18-7-1984, his services were not regularized nor was he granted permanent status in spite of the fact that he did his job with all sincerity at his end and there was no departmental proceeding.

3. As pleaded by the employer, the claim of the workman that he was in regular employment as casual labour from 20-8-79 to 18-7-84 was denied. It was further pleaded that he was never issued any casual service card, his name is not mentioned in the live register maintained by the employer with regards to casual labour. He has raised the dispute after 20 years in 2014 hence the reference be answered against him on the ground of delay and laches, also pleaded that there is no post of casual labours in Railways. The service conditions applicable to permanent or temporary staff don't apply to casual labor. Also, it was pleaded that his service was never terminated by management and accordingly, it was prayed that the reference be answered against the workman.

4. Workman filed and proved casual labour card Exhibit W-1 and examined himself on oath as witness. He also examined one Nand Kishore Yadav, a co-worker as his witness. The employer filed and proved copy of live casual labour register Exhibit M-1 and examined Shri Ramjeevan Goswami, CPWI as its witness.

5. Mr. N.K.Salunke, Advocate appeared for workman and employer was represented by Shri S.Mishra, Advocate. I have heard argument from both the sides and have perused the record.

6. It has been submitted by learned counsel for workman that 'Act' does not provide for limitation hence reference cannot be rejected on the ground of delay and laches on the part of workman in raising the dispute. Also it was submitted that the employer had issued casual labour card which has been filed and proved by workman which goes to show the engagement of the workman for the period stated by him and this fact is further corroborated by the statement of workman as well as his witness on oath. Hence the fact that the workman remained in employment of the employer for a period of 240 days in the year preceding the date of his termination is proved. It is also proved that he was not issued any show cause or given any compensation hence his termination is against law as violative of Section 25-F of the Act. Workman requires to be reinstated with all back wages and benefits.

7. On the other hand, learned counsel for employer has stated that the dispute was raised by the workman after 20 years of his alleged termination of services for which there is no justification hence the reference should be answered against him on the ground of delay only. Also, it was submitted that the casual labor card is a fictitious document because it was not issued as per rules. the live casual labour register maintained by the employer doesnot mention the name of the workman which is further corroborated by management witness hence a self serving statement of workman on oath and as co-worker witness cannot be relied upon. Accordingly it has been submitted that workman has failed to prove his engagement for 240 days in the year preceding the date of his termination he is not entitled to any relief claimed and the reference be answered against the workman.

8. On perusal of record in the light of rival argument, following points come up for determination:-

- (1) Whether the termination of services of the workman Shri Ram Ratan Prasad, Ex Casual Labour w.e.f. 19-7-84 is legal and justified?
- (2) Whether the workman is entitled to any relief?

9. Point for determination No.1-

The case of the parties on this point has been detailed earlier. Workman has examined himself on oath. He has stated that he was first appointed as a daily wager in Katni on 20-4-1979. He had undergone the medical test. He continued in service till 18-7-84 when his services were terminated by oral order. Thus if he continued in service of the employer for 5 years, more than 240 days in every year but he was not granted temporary employee status, he was not issued any notice nor was he given any compensation. He has proved the service card issued to him as Exhibit W-1.

10. In his cross examination by management learned counsel, he has admitted that this card is issued after depositing Rs.2/- as fees of the card which he has not paid. He admitted that live register is maintained by employer with regards to casual labor. He denied the case of management that in fact the service card is fictitious, Nand Kishore Yadav, the workman witness has corroborated the statement of workman on oath. He stated that he was also working with the workman as casual labor in Katni and he was regularized in 1987 and that the present workman had been his co-worker. He also stated that o notice or compensation was given to the present workman. In his cross-examination, he adduced that Rs.2/- is required as fee for issue of casual card.

11. On the other hand, management witness happens to be CPWI in Katni- the place where the workman is said to be working and further stated that the present workman was never engaged by management under CPWI Katni for the period 20-4-79 to 18-7-84 as casual labor. He was never engaged as casual labor. His name does not find in live casual labor register wherein the particulars of casual labor who worked in between July 1969 to 1986 were maintained. This witness has further stated that the alleged Service Card No. 191484 was never issued by the department.

12. This witness has proved the relevant entry of live casual register as Exhibit M-1. In his cross-examination, this witness has stated that the casual live register proved contents, entries from 1969 to 1986. This witness admits that the column12 of the register contains the number of days the workmen were put on work till 18-11-89. When this entry was made he cannot tell.

13. On the one side, there is a service card proved by the workman about which he admits that it was issued to him inspite of the fact that he did not deposit the required fee for issuing it. Workman has not examined the official who has signed and stamped or has made entries in this service card Exhibit W-1 in which first entry is of workman Amritlal- date of his engagement as casual labor is mentioned 22-11-76 in Column 8, service card number of this workman is mentioned 94887 in Column No.9. The last entry is at Sl.No.104 regarding workman Sonelal. According to the date mentioned in Column No.8, this workman was engaged on 22-5-78. The perusal of this document shows that different workmen in the list were engaged on different dates and the entries are not in descending order in terms of period of engagement. The name of present workman doesnot find place in this list though other workman engaged in the year

1979 have been mentioned, for example; workman Jainarayan engaged on 22-8-79 mentioned at Sl.No.6, Shri Motilal engaged on 27-0-79 mentioned at Sl.No.9. similarly Sl.No.65 to 69 are the details of workers engaged in different months of 1979 out of which two workers Govind at Sl.No.67 & Gorelal at Sl.No.68 have been shown to be engaged in the month of April which is 23-4-79 & 21-4-79. According to the case of workman, he was engaged on 20-4-79.

14. Learned counsel for workman could not explain as to how the name of present workman who claims himself to have been engaged in the same month and year as the other workmen mentioned earlier have been engaged does not find mentioned in this list. As already stated, the casual labour card filed by workman and proved by him has not been issued as per rules is the fact admitted by workman and his witness.

15. In the light of above description of evidence, the document and oral statement of workman regarding his engagement as casual labour does not inspire confidence. Accordingly, it is held that from the evidence on record, engagement of workman as alleged by him is not proved. **It is also not proved that the workman was in continuous engagement for 240 days in the year preceding his date of disengagement. On the basis of this finding on fact, it is held that the termination/ disengagement of workman is justified in law in the case in hand.**

Point for determination No.1 is answered accordingly.

16. Point for Determination No.2-

In the light of findings recorded at Point No.1, workman is held entitled to no relief. Even if the workman would have been found to be in continuous engagement for 240 days in the year preceding date of his disengagement, he could not be held entitled to any relief on the ground of delay and laches on his part in raising the present dispute. Settled law on the point is that though there is no limitation provided in the Act for raising dispute, but if the dispute has been raised after an inordinate delay, the workman has to show that he kept the dispute alive for that period. For this, he may show that he made representations, which were not heard or he was following remedy in other forums. This is not so in the case in hand. on this ground also, workman is not entitled to any relief.

17. In the result, award is passed as under:-

- (1) The action of Divisional Railway Manager, West Central Railway, Jabalpur in terminating the services of Shri Ram Ratan Prasad, Ex Casual Labor w.e.f. 19-7-84 is legal and justified.
- (2) Workman Shri Ram Ratan Prasad is not entitled to any relief.

Dated:13-5-2019

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 17 जून, 2019

का.आ. 1059.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या 45/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 17.06.2019 को प्राप्त हुए थे।

[सं. एल-12012/04/2012-आईआर (बी-1)]

बी. एस. बिष्ट, अवसर सचिव

New Delhi, the 17th June, 2019

S.O. 1059.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 45/2012) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 17.06.2019.

[No. L-12012/04/2012-IR (B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/45/2012

Shri Jugal Kishore Kar,
S/o Shri Prafull Kar,
Ward No.-09, Dongaripara,
Jhilmila, Saraipalli,
Distt. Mahasamund (CG)

...Workman

Versus

Zonal Manager,
State Bank of India,
Byron Bazar, Raipur (CG)

Branch Manager,
State Bank of India,
Saraipally,
Mahasamund (CG)

...Management

AWARD

Passed on this 7th day of May 2019

1. As per letter dated 20-3-2012 by the Government of India, Ministry of Labor, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947, hereinafter referred by word 'Act', as per Notification No.L-12012/04/2012-IR(B-I). The dispute under reference relates to:

“Whether the action of the management of State Bank of India, Saraipali Branch, Mahasamuund (CG) in terminating the service of Shri Jugal Kishore Kar w.e.f. 9-9-2010 without following the provision of law in an illegal manner? To what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Workman filed statement of claim. It is the case of workman in his statement of claim that he was appointed as canteen boy/ messenger on 18-8-02 by employer Branch Manager State Bank of India and has been doing his job with all sincerity and dedication to the satisfaction of all concerned till 9-9-2010, the date on which his services are orally terminated by the Branch Manager without giving any show cause notice or compensation. He raised the dispute before Asstt. Labor Commissioner. After failure of conciliation, the dispute was referred to this court. It is the case of the workman that he was doing the job of canteen boy for which he was paid wages Rs.1000 per month. He also did the task of messenger for which he was paid Rs.50/- per day. According to him, he had completed more than 240 days without any break in service of the employer on the date preceding the date of his termination of his services which is 9-9-2010. He had completed 240 days in every year in continuous service since 18-8-02 till 9-9-2010. Hence his termination was bad in law being violative of Section 25-F of the Act because he was not given any prior notice or compensation. His termination is also bad as violative of bipartite settlement. Accordingly, it was prayed that setting aside the termination, the workman be reinstated with back wages and benefits.

3. In the Written Statement filed by the employers, they did not dispute the case of the workman that he was in engagement as canteen boy for the period 18-8-02 to 9-9-2010. The employers pleaded that his engagement was in the canteen which was not run by Bank rather it was run and administered by a Committee. It was also pleaded that appointment of any type of employees in the Bank is regulated by regulations since firstly, he was not an employee of the Bank and secondly, he was a daily wager. His appointment was not according to rules. Hence there was no question of his disengagement by Bank because he was not in the engagement of the Bank. It was further pleaded that additional task of messenger was taken from him for which he was paid Rs.50 on daily basis. Accordingly, it was pleaded that there is no relationship of employer and employee between the parties. He is not a workman as defined in the Act in the engagement of Bank. Hence his engagement was not violative of Section 25-F of the Act.

4. The workman filed rejoinder in which he controverted the pleadings of employer Bank in their Written statement of defense.

5. The workman filed a certificate issued by Branch Manager dated 8-9-2008 & proved it as Exhibit W-1. Workman has also filed photocopy of documents which are not admitted by employers and not proved by the workman hence cannot be read into evidence.

6. Workman examined himself and his witness Hukumchand Sharma, the Branch Manager during the period 2005 to 2006 in the said Bank. Employers examined on oath Shri Anup Kumar Roy, Branch Manager of the Bank. No documents has been filed by the employers.

7. At stage of argument, none was present hence oral argument were not heard. Parties were given liberty to file written arguments. Learned counsel for employer filed written argument on 24-4-2019 and learned counsel for workman filed written argument on 6-5-2019 which have been admitted on record. I have gone through the argument and have also perused the records.

8. The main course of argument from the side of workman is that he was in continuous engagement of the Bank since 18-8-02 till 9-9-2010 which is not disputed by Bank and is proved by the then Branch Manager as well as the workman in their statement on oath. This is also admitted that no notice or compensation was given hence it is proved that his termination is against the Act and bad in law. He requires to be reinstated with back salary and wages setting aside his termination. No case law has been referred.

9. On the other hand, it has been submitted on behalf of the employers that workman was a canteen boy which was not run by the Bank but by a local implementation committee constituting of the Branch Manager as Chairman and some other employees as members, his wages were paid from the funds of that committee and not from Bank hence he cannot be said to be in engagement of Bank. Case law **State Bank of India versus State Bank of India Canteen Employees Union (Bengal Circle)- (2000) 5 SCC 531** has been referred to in this respect. It has also been submitted that workman was never appointed as messenger. Additional task of messenger was taken from him when he was a daily wager canteen boy for which he was paid Rs.50/- on daily basis. Also it was submitted that since he was never in the engagement of the Bank, he cannot be said to be a workman with reference to Bank as defined in the Act hence there is no question of violation of Section 25-F of the Act in his disengagement. Learned counsel has referred to following case laws in his written arguments-

- i. Range Forest Officer vrs S.T.Hadimani- (2002)3-SCC-25.
- ii. Krishna Bhagya Jala Nigam Ltd. V. Mohd Rafi- (2009)1SCC-522
- iii. Municipal Corporation, Faridabad V. Siri Niwas (2004)8-SCC-1995
- iv. M.P.Electricity Board v. Hariram- (2004)8-SCC-246.
- v. RBI V. S.Mani- (2005)5.SCC-100
- vi. R.M.Yellatti V. Executive Engineer- (2006)1-SCC-106
- vii. Talwara Coop Credit and Service Society Ltd. V. Sushil Kumar – (2008)9-SCC-486.
- viii. Jagbir Singh V. Haryana State Agriculture Mktg.Board- (2009)15SCC-327
- ix. BSNL V. Man Singh- (2012)1 SCC-558
- x. Rajasthan Development Corp. V. Gitam Singh- (2013)5-SCC-136
- xi. District Dev.Officer Vs. Satish Kantilal Amrelia- (2018)12 SCC-298

10. After having perused the records in the light of rival argument, following points come up for determination in the case in hand-

1. Whether the workman has been in employment/ engagement of Bank between the period 18-8-02 to 9-9-2010?
2. Whether the termination of services of workman w.e.f. 9-9-2010 is against law?
3. Whether the workman is entitled to any relief?

11. Point for Determination No.1-

Admitted fact between the parties is that the workman was engaged as a canteen boy in the branch canteen for which he was paid Rs.1000/-. The workman witness Hukum chand Sharma who was the Branch Manager of the said branch in the period 2005-06 has admitted in his cross examination that the canteen was being run by Local Implementation Committee, wages of the canteen boy were paid from the funds of this committee. The canteen used to run within the Bank hours. Branch Manager is President of the Committee. Workman himself has admitted that he was engaged as a canteen boy in the canteen though he has stated that additional task of messenger was also taken from him.

12. Management's witness Anup Kumar Roy has also stated in his statement that workman was a canteen boy engaged in the staff canteen. He used to serve water and tea to the staff. Now the question arises whether employee of canteen will be deemed to be Bank employee or not. This question has been answered by Hon'ble **Supreme Court in case State Bank of India versus State Bank of India Canteen Employees Union (Bengal Circle)- (2000) 5 SCC 531.** Relevant para of the said judgment referred by learned counsel by employers is being reproduced as under-

Learned counsel for the appellants further relied upon the decision in *M.M.R. Khan and Others v. Union of India and Others* [(1990) Supp. SCC 191] and submitted that status of the employees of the canteen run by the LIC should be that on non-statutory recognized canteens as held in the said case. In our view, that very judgment was considered by this Court in *R.B.'s case* and was distinguished. Therefore, it does not require further discussion in this matter. However, it is to be stated that in that judgment itself, the Court has observed that the canteens run by the different Railway establishments were classifiable into three categories, namely, (1) Statutory Canteens These are canteens required to be provided compulsorily in view of Section 46 of the Factories Act 1948.

(2) Non-Statutory Recognized Canteens These are run by any establishment which may or may not be governed by the Act, but which admittedly employ 250 or less than 250 employees and hence, it is not obligatory on the Railway to maintain them. However, they have been set up as a staff welfare measure where employees exceed 100 in number. These canteens are established with prior approval and recognition of the Railway Board as per the prescribed detailed in the Railway Establishment Manual.

(3) Non-statutory Non-recognized canteens These canteen are run at establishments under category (2) above, but employ 100 or less than 100 employees and are established without prior approval or recognition of the Railway Board. With regard to the employees in categories (1) and (2) above, the Court held that they are Railway employees for all purposes and they cannot be deprived of the status merely because some other employees similarly or dissimilarly situated may also claim the same status. With regard to the third category, the Court held that employees of non-statutory non-recognized canteens are not entitled to claim the status of the Railway servants because Railway administration was having no control on their working. It also observed that no rules whatsoever were applicable to the recruitment of the workers and their service conditions. In the present case, in our view, the canteens run by the LIC in a branch having strength of less than 100 employees are non-statutory non-recognized canteens because admittedly there is neither statutory provision nor any obligation arising out of award or contract between the employees of the Bank in running such canteens. As stated earlier, finally the 4th settlement was arrived at between All India SBI Staff Federation and the Bank which inter alia provides that Bank will take over canteens from Local Implementation Committees concerned at such offices/branches having a minimum staff strength of 100 where the canteens are still being run by the said Committees. Hence, contractual obligation is limited to that extent. For the canteens run by the Local Implementation Committees, there is no question of its recognition by the State Bank as in the case of recognised canteens in the Railways where Railway Board granted recognition to the canteens as per prescribed detail in the Railway Establishment Manual. On the contrary, the status of canteens run by the Local Implementation Committees would be non-statutory non-recognised canteens. The employees of such canteens were not under the control of the Bank and their appointments are not governed by any rules framed by the SBI.

The learned counsel for the employees further relied upon the decision in *Parimal Chandra Raha and Others v. Life Insurance Corp'n. Of India and Others* [1995 Supp (2) SCC 611] and submitted that as held in para 25 of the said decision, it should impliedly be held that Bank was under an obligation to provide canteen facilities to the employees as part of the service conditions.

Relevant para is as under:-

What emerges from the statute law and the judicial decisions is as follows:

- (i) Whereas under the provisions of the Factories Act, it is statutorily obligatory on the employer to provide and maintain canteen for the use of his employees, the canteen becomes a part of the establishment and, therefore, the workers employed in such canteen are the employees of the management.
- (ii) Where, although it is not statutorily obligatory to provide a canteen, it is otherwise an obligation on the employer to provide a canteen, the canteen becomes a part of the establishment and the workers working in the canteen, the employees of the management. The obligation to provide a canteen has to be distinguished from the obligation to provide facilities to run canteen. The canteen run pursuant to the latter obligation, does not become a part of the establishment.
- (iii) The obligation to provide canteen may be explicit or implicit. Where the obligation is not explicitly accepted by or cast upon the employer either by an agreement or an award, etc., it may be inferred from the circumstances, and the provisions of the canteen may be held to have become a part of the service conditions of the employees. Whether the provision for canteen service has become a part of the service conditions or not, is a question of fact to be determined on the facts and circumstances in each case.

Where to provide canteen services has become a part of the service conditions of the employees, the canteen becomes a part of the establishment and the workers in such canteen become the employees of the management.

- (iv) Whether a particular facility or service has become implicitly part of the service conditions of the employees or not, will depend, among others, on the nature of the service/facility, the contribution the service in question makes to the efficiency of the employees and the establishment, whether the service is available as a matter of right to all the employees in their capacity as employees and nothing more, the number of employees employed in the establishment and the number of employees who avail of the service, the length of time for which the service has been continuously available, the hours during which it is available, the nature and character of management, the interest taken by the employer in providing, maintaining, supervising and controlling the service, the contribution made by the management in the form of infrastructure and funds for making the service available etc.

As stated above, in the present case there is no statutory or otherwise obligation of the employer to provide the canteen. Therefore, the aforesaid decision would have no bearing. However, the learned counsel for the employees submitted that obligation to maintain canteen may be explicit or implicit as held in the said decision and that can be inferred from the facts of the present case as the Bank has admitted by four settlements stated above that it would provide canteen facilities to the employees where staff strength in a particular branch is 100 and above. He, therefore, submitted that thereafter there cannot be any discrimination for remaining branches. Hence it should be impliedly held that there is an obligation to run the canteens. In our view, this type of inference is not possible because the SBI Staff Federation in various settlements stated above has not considered it to be an obligation of the Bank to run such canteens. At the most, it can be inferred that Bank has an obligation to promote running of canteens at its branches as a part of its staff welfare activities.

Further, we entirely agree with the decision rendered in the R.B.Is case (supra) by the three-Judge Bench and the facts in the present case are similar to the facts of that case. Presuming that privilege of providing canteen facilities to the employees exist, yet it would be difficult to hold that the Bank should provide the said facility by running canteen by itself. To promote canteen facilities by providing subsidy or other facilities is altogether different from running the canteen. Running of a canteen in a small branch having staff strength less than a particular limit may not be economical, but may be waste. It has been pointed out by the learned counsel for the Bank that in some areas, staff strength may be less than 10. Further, the appointment of the employees by the Bank has been regulated by the State Bank of India General Regulations, which are statutory regulations framed by the Reserve Bank of India with previous sanction of the Central Government in exercise of powers conferred by sub-section (3) of Section 50 of the State Bank of India Act, 1955. In the case of canteen employees run by the LIC, the Bank does not have any control in their appointment and the aforesaid recruitment rules are not required to be observed.

We may mention here that learned counsel for the employees submitted that in such cases Court should lift the veil and find out the real situation and if that is done it would be apparent that as a part of the service conditions Bank is required to provide canteen facility to its employees. We may state that there is no veil and, therefore, there is no question of lifting it. The Scheme framed by the Bank is crystal clear. It provides that Bank shall promote certain welfare activities for the benefit of its employees. One of such welfare activities is promotion of canteen facility. There is a vast difference between promotion and providing. Further, whether Bank should provide canteen facilities in a branch having staff strength of 100 or more employees on the basis of bipartite agreement between the Bank Management and All India SBI Staff Federation, is a matter of policy decision and may depend upon viability and other factors of running of such canteens at other branches. It is for the Bank to decide in which branches canteen facilities should be provided and not by the employees of the canteens run by the Local Implementation Committees. At the most, employees of the Bank can raise such a contention. The learned counsel for the appellant further submitted that LIC consist of employees of the Bank and those employees are directly under the control of the Bank, therefore, it should be held that Bank is the employer of the persons working in the canteen. This submission, in our view, is totally far-fetched. Firstly, it is to be stated that in a canteen which provides facilities to the members of the staff, outsider is not required to be included in the Committee or its Management. In the case of RBI (Supra), the LIC not only consisted of Bank employees but some Bank employees were required to do full time work. Still, however, this Court has not considered that Bank was having any control in working of the canteens. We may also state that in the present case there is no question of application of provisions of the Contract Labour (Regulation & Abolition) Act, 1970 and, therefore, the decisions rendered by this Court interpreting the said Act are not discussed.

We, therefore, hold that employees of the canteens which are run at various branches by the Local Implementation Committees as per the welfare scheme framed by the SBI would not become employees of the Bank as the Bank is not having any statutory or contractual obligation or obligation arising under the Award to run such canteens. Hence, it is not necessary to decide the second question that fresh petition for the same cause was not maintainable in view of the order dated 14.10.1985 passed by this Court.

In this case it has been held that a canteen boy or canteen worker in a canteen over which Bank has no supervision or control run by Local Implementation Committee is not a Bank servant. Same are the facts of the case in hand. In the present case also, it is established that canteen was run as branch level, it was run and managed by Local Implementation Committee over which Bank had no control hence the workman being canteen boy in the case in hand cannot be held to be in service of the Bank.

13. Reference of one more case Indian Overseas Bank versus IOB Staff Canteen Workers Union Civil Appeal No. 1407-1409/1998 decided on 11-4-2000 by Hon'ble Apex Court may also be referred to in this respect wherein the principle of law laid down in State Bank case (Supra) has been affirmed.

14. It is further a case of workman that task of messenger was also taken from him. This fact is not disputed. This is also not disputed that workman was paid additional Rs.50/- for this task on daily basis. According to the case of workman himself and his witnesses, this was additional task for which additional payment was paid to the workman hence workman cannot be held to be engaged as messenger in this case.

15. On the basis of above discussion, from the evidence on record the fact that workman was an employee of any type in the engagement of Bank is held not proved. Point for Determination No.1 is answered accordingly.

16. Point for Determination No.2-

Section 2(00) & Section 25(F) of the Act required to be referred here and are being reproduced as follows:-

Section 2(oo)

“**retrenchment**” means the termination by the employer of the service of workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include- (a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

3[(bb) termination of the service of the workman as a result of the on- renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or] (c) termination of the service of a workman on the ground of continued ill-health;]

Section 25-F:-

Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2[for every completed year of continuous service] or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government 3[or such authority as may be specified by the appropriate Government by notification in the Official Gazette.

In the light of finding recorded in Point No.1, it is held that there is no violation of Section 25-F of the Act in the case in hand. There was no relation of master and servant between the parties.

17.Point for Determination No.3:-

In the light of findings recorded in Point No.1 & 2, workman is held entitled to no relief.

18. In the result, award is passed as under:-

- (1) The action of the management of State Bank of India, Saraipali Branch, Mahasamuund (CG) in terminating the service of Shri Jugal Kishore Kar w.e.f. 9-9-2010 is proper and legal.
- (2) Workman is not entitled to any relief.

Dated: 7.5.2019

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 17 जून, 2019

का.आ. 1060.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण /श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 50/2017) को प्रकाशित करती है जो केन्द्रीय सरकार को 17.06.2019 को प्राप्त हुआ था।

[सं. एल-12012/94/2017-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 17th June, 2019

S.O. 1060.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.50/2017) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, NAGPUR as shown in the Annexure, in the industrial dispute between the management of Bank of India and their workmen, received by the Central Government on 17/06/2019.

[No. L-12012/94/2017-IR (B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE**BEFORE SHRI S.S. GARG, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR**

Case No.CGIT/NGP/50/2017-18

Date: 22.04.2019

Party No.1(a) : The Chairperson and Managing Director,
Bank of India, Star House,
C-5, 'G' Block, Bandra Kurla Complex,
Bandra (East), Mumbai – 400051.

Party No.1(b) : The Assistant General Manager,
Bank of India, Nagpur 2 Zone,
Bank of India Buliding,
S.V. Patel Marg,
Nagpur – 440001.

Party No.1(c) : The Zonal Manager,
Bank of India, Zone-II, S.V. Patel Marg,
Kingsway, Station Road,
Nagpur – 440001.

Party No.1(d) : The Manager,
Bank of India, Main Branch, Chandrapur,
Distt. Chandrapur (M.S.).

Versus

Party No.2 : Shri Rajendra D. Bakre,
R/o Samarth Apartments,
48, Ramkrishna Nagar, Khamla,
Nagpur – 440025.

AWARD(Dated: 22nd April, 2019)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Bank of India and their workman, Shri Rajendra D. Bakre for adjudication, as per letter No.L-12012/94/2017 (IR (B-II) dated 09.02.2018, with the following schedule:-

"Whether the action of the management of Bank of India in issuing Memorandum dated 09.12.2014 calling explanation for various misconducts and charge sheet dated 09.01.2015 containing various charges upon Shri R.D. Bakre, an ex-clerk of the Bank of India, Main Branch, Chandrapur during the pendency of proceedings before the Assistant Labour commissioner (Central), Chandrapur, is contravention of Section 33(1)(a) & (b) of the I.D. Act, 1947 or not?"

2. Whether the action of the management of Bank of India in deducting amount of Rs. 6965.23 from salary for the period of 3rd, 4th & 5th February, 2014 and not paying full salary amounting to Rs. 33250.30 for the month of September, 2014 in respect of Shri R.D. Bakre an ex-clerk of Bank of India, Main Branch, Chandrapur arre legal and justified? If not, what relief to the said workman is entitled to?

3. Whether the action of the management of Bank of India in imposing the punishment of dismissal from service vide Order No. VZO/IRD/C/159/267 dated 01.10.2015 of A.G.M. and Disciplinary Authority of Bank of India, Zonal Office, Vidarbha Zone, Nagpur for the charges as contained in charge sheet dated 09.01.2015, is legal and justified? If not, what relief to the concerned workman and from which date?

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement, by registered post with acknowledge due fixing the date on 02.07.2018. On that day, Shri Awadhoot Purohit, advocate filed vakalatnama for the management, but the petitioner was absent. This Tribunal fixed dates to file statement of claim on 16.08.2018, 12.10.2018, 01.11.2018, 10.12.2018, 04.01.2019, 15.02.2019 and 18.04.2019. Moreover, office supplied the photocopy of the postal receipt through which, service of notice was sent to the petitioner. This receipt is dated 22.05.2018. So, presumption of service of the notice to the petitioner may be drawn.

3. Advocate for the management filed an application for issuance of directions for supply of copies, which is marked as I.A. No. I, but neither petitioner nor his advocate appeared or participated in the proceedings. So, such order could not be issued. Hence, application I.A. No. 1 is rejected, but it shows that, petitioner is not interested to proceed with this reference. Hence it is ordered:

ORDER

The reference is answered in the negative and against the petitioner. The petitioner is not entitled to any relief.

S.S. GARG, Presiding Officer

नई दिल्ली, 17 जून, 2019

का.आ. 1061.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय सिंडिकेट बैंक प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलोर के पंचाट (संदर्भ संख्या 15/2008) को प्रकाशित करती है जो केन्द्रीय सरकार को 17.06.2019 को प्राप्त हुआ था।

[सं. एल-12012/120/2007-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 17th June, 2019

S.O. 1061.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 15/2008) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the industrial dispute between the management of Syndicate india and their workmen, received by the Central Government on 17/06/2019.

[No. L-12012/120/2007-IR (B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE
BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
BANGALORE

Dated : 10th June, 2019

Present : Justice Smt. Rathnakala

C.R. No. 15/2008

I Party

The General Secretary,
Dharwad District Bank
Employees Association,
No.9, Corporation Building,
Broadway,
Hubli – 580 020.

II Party

The Regional Manager,
Syndicate Bank,
Regional Office,
Manvi Building,
No. 144, Neeligin Road,
Hubli

Appearance

Authorised representative for I Party : Mr. M. Rama Rao

Advocate for II Party : Mr. Ramesh Upadhyaya

A W A R D

The Central Government vide Order No.L-12012/120/2007-IR(B-II) dated 18.02.2008 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

“Whether the punishment of compulsory retirement from service imposed on Smt. Jaitumbi C Karnool, Part-time Sweeper, by the management of Syndicate Bank is legal and justified? If not, to what relief the workman is entitled to?”

1. The point for reference is, the Union has espoused the cause of Smt. Jaitumbi C Karnool who was working as a Part time Employee/Sweeper in the 2nd Party Bank at Gadag Branch. She served for 15 years in the same position and was issued articles of charge sheet dated 12.12.2005. The gist of the allegation was that on 23.05.2005 she surreptitiously/stealthily removed/taken Bank's cash in one packet of Rs. 500/- denomination amounting to Rs. 50,000/- from the safe/double lock and was not available to discuss the matter; on the next morning on 24.05.2005 when enquired she immediately handed over the packet containing Rs. 50,000/- to Smt. Sandhya Vasudev, who was the Assistant Manager; she has given a apology letter which is drafter by her daughter on the same day. This act of 'doing acts prejudicial to the interest of the Bank' vide Clause No. 5(j) of Memorandum of Settlement dated 10.04.2002 amounts to gross misconduct.

2. The 1st Party workman denied the charges, Domestic Enquiry was initiated, and the Enquiry Officer submitted his Enquiry Report by holding the charges, proved. The Disciplinary Authority called upon her remarks to the Enquiry Report, she submitted that the Enquiry Officer had not considered her written brief and she had presented the copy of the said written brief to the Disciplinary Authority for consideration. The Disciplinary Authority passed a detailed order and proposed the punishment of Dismissal from the service of the Bank. However, called upon her to appear for personal hearing held on 04.04.2007, she reiterated that she had kept the cash of Rs. 50,000/- found by her in Strong room in the table drawer of Smt. Sandhya Vasudev/Officer on 23.05.2005 itself; she gave the letters to the Bank without knowing the contents/consequences; she has pleaded for mercy and requested that mistakes on her part, if any, may be viewed leniently. She also requested to allow her to retire from the services of the Bank honourably. The Disciplinary Authority passed the order of Compulsory Retirement with superannuating benefits and without disqualification for future employment.

3. Before this Tribunal in its claim statement the 1st Union maintained that on 23.05.2005 she was cleaning the double lock with another sub-staff, she found a bundle of Rs. 50,000/- notes and went to Smt. Sandhya Vasudev/Officer and told her that the amount was lying on the floor of double lock. Smt. Sandhya Vasudev told her to put the amount in the drawer since she was attending her work; on 24.05.2005 morning, the Branch Manager called 1st Party workman and her daughter and dictated a letter to the 1st Party's daughter and took signature of the 1st Party on the said letter and said

that, it pertains to handing over of Rs. 50,000/- to Smt. Sandhya Vasudev, Officer. However, she was issued with the charge sheet. The Domestic Enquiry was held violating the Principle of Natural Justice. The Enquiry Officer without considering her contentions has submitted his report. She had requested the Disciplinary Authority to send back the Enquiry Report for consideration of her written arguments. The Disciplinary Authority did not consider her defence; when she was ordered for Compulsory Retirement she was left with 51 days of service. The Punishment imposed on her was illegal and excessive. The Officers responsible for the incident were left free and discriminated the 1st Party workman. The General Manager/Appellate Authority without applying his mind mechanically disposed of the appeal. She was not kept under suspension. She should have been allowed to continue in service for remaining 51 days.

4. The 2nd Party in its counter statement maintained that, she had removed the currency note bundle of Rs. 50,000/- on 23.05.2005 from the Bank's safe/double lock while sweeping. The Branch Manager could not discuss the issue with her as she was not available at that time; without any other option the Joint Custodians borrowed the money in the evening and reimbursed the amount and tallied the cash. On 24.05.2005 the Branch Manager enquired the 1st Party workman about the missing of the cash from double lock, immediately at 10.40 am she handed over the packet of Rs. 500/- denominations to Smt. Sandhya Vasudev; she submitted a letter to the Bank in this regard admitting that she had taken away the Bank's cash on 23.05.2005 and handed over the same on 24.05.2005 to the Branch Officials. The enquiry was held by giving all reasonable opportunities to defend her. The Enquiry Officer based on the evidence led before him came to conclusion that during the enquiry charge levelled against her is proved. She did not appear before the Appellate Authority on the appointed date and adjourned date. Under the circumstances the punishment of the Disciplinary Authority was confirmed.

5. The fairness of the Domestic Enquiry is up held by the order of this Tribunal dated 19.08.2013. The disputed fact in the present case is on what date the 1st Party workman handed over the Bank's amount/bundle of currency notes of Rs. 50,000/-. If the defence is admitted, immediately after finding the bundle while sweeping the double lock she handed over the amount to the Assistant Manager, Smt. Sandhya Vasudev on 23.05.2005 but the officer since was busy with her work asked the 1st Party workman to put the amount in the drawer and on the next morning the Branch Manager forcibly took apology letter Ex MEX-2. The confession letter was marked during the enquiry as Ex MEX-2; a translated version of the said letter would sound **'I Smt. Jaitumbi Shilarsab Karnool state that, yesterday on 23.05.2005 at about 1.30 pm I had taken Rs. 50,000/- from the Strong room of the Bank, today at 10.40 am I surrendered the same to Smt. Sandhya Vasudev, Officer, I should have returned the amount to the Manager yesterday itself, please condone my mistake and I under take that I will not repeat the same in future'**. The workman did not dispute executing such a letter; however turned around at a later stage that she does not know to read and write Kannada, her daughter had drafted the same as per the dictation of the Manager and she does not know the contents of the letter. Since, the said letter has been produced from the custody of 2nd Party to appreciate the same it needs corroboration. The letter submitted by Smt. Sandhya Vasudev, Assistant Manager (Ex MEX-3) would sound that on 24.05.2005 at 10.30 am the 1st Party handed over a packet of Rs. 500/- notes, when asked from where she had procured it, she muttered something incoherently, she ordered her to meet the Manager immediately and 1st Party straightway went and handed over the packet to the Manager. The letter of the Assistant Manager (Ex MEX-4) was to the effect that on 23rd while keeping the cash in the double lock in the evening it was noticed that there was shortage of Rs. 50,000/- of Rs. 500/- denominations; the amount was made good by himself and the Senior Manager, on the next day after the Senior Manager interrogated Smt. Jaitumbi C Karnool she handed over the packet of Rs. 50,000/- of Rs. 500/- denominations. As per the version of the Senior Manager (Ex MEX-1/Ex M-22) he enquired both the sweepers on the morning on 24.05.2005, he doubted Smt. Jaitumbi, he warned her of strict action, within 5 minutes of the warning she handed over the amount to the Lady Officer who promptly reported the matter to him. There are glaring discrepancies between these letters, as one can easily make out.

6. On the other hand the story set up by the 1st Party appears to be not in natural course, since Rs. 50,000/- as on that day was a very big amount, no prudent Officer would have ignored if somebody would report that they found Bank property of Rs. 50,000/- in the cash room. If the case of the 1st Party is to be rejected, then there is no other go except to accept the Management case. Even, thereafter what remains to be adverted is immediately after being warned of strict action, she has surrendered the amount, that means to say she had not removed the amount from the premises of the Bank, probably the amount all along was within the corners of Bank only. If that be so, the amount is not temporarily misused/misappropriated nor stolen from the Bank; more surprisingly it is reported that, no action is taken against the Custodian and Joint Custodian of the Bank who exhibited gross negligence in allowing two sweepers to the double lock, thereby allowing her access to the cash. Their omission is of higher degree than that of the commission of misconduct alleged against the 1st Party workman. All through it was the defence case that, because she is a woman from the minority community they have victimized her. Looking from that angle, the 2nd Party has sacrificed the humble lamb, ditched the 1st Party workman to bail out the superiors. The woman at the fag end of service was punished. Though it may not serve more beneficial by setting aside the punishment order, still the ends of justice would call upon to exercise the Jurisdiction vested with this Authority by section 11-A of the Industrial Dispute Act to interfere with the matter. As such the Bank did not suffer any financial loss, dislocation of work by her misconduct. Even they have not suspended her during the Domestic Enquiry; her apology that, she will not repeat such misconduct is of no consequences since she is not the person having any custody, authority or access to the property of the Bank more specifically the cash amount of the Bank.

7. In that view of the matter I hold it is a fit case to unsettle the punishment order so that the Authority who are in the helm of the affairs who are also the guardians of the public property will be alert henceforth in such matter rather than fixing a scapegoat to get away from their responsibility.

A W A R D

The reference is accepted. The action of the Management of Syndicate Bank in imposing the punishment of Compulsory Retirement from service on Smt. Jaitumbi C Karnool, Part-time Sweeper is not justified. Hence, said punishment order is set aside, the 2nd Party is directed to release 100% of the Back wage from the date of the punishment order till the date of her superannuation and also release the difference of amount of her consequential terminal benefit within 60 days of the publication of the Award, otherwise the amount shall carry future interest of 8% per annum.

(Dictated, corrected and signed by me on 10th June, 2019)

JUSTICE SMT. RATHNAKALA, Presiding Officer

नई दिल्ली, 17 जून, 2019

का.आ. 1062.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय सिंडिकेट बैंक प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलोर के पंचाट (संदर्भ संख्या 41/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 17.06.2019 को प्राप्त हुआ था।

[सं. एल-12011/47/2006-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 17th June, 2019

S.O. 1062.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.41/2006) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the industrial dispute between the management of Syndicate Bank and their workmen, received by the Central Government on 17/06/2019.

[No. L-12011/47/2006-IR (B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated : 10th June, 2019

Present : Justice Smt. Rathnakala, Presiding Officer

C.R. No. 41/2006

I Party

The General Secretary
Dharwad District Bank
Empls. Asson.,
No. 9, Corporation Building,
Broadway,
Hubli - 580020

II Party

The Chairman
Syndicate Bank
Head Office, Manipal
UDUPI - 576101
(KARNATAKA)

Appearance

Advocate for I Party : Mr. M Rama Rao

Advocate for II Party : Mr. Ramesh Upadhyaya

A W A R D

The Central Government vide Order No. L-12011/47/2006-IR(B-II) dated 11.10.2006 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

“Whether the management of Syndicate Bank is justified in dismissing the services of Shri Manjunatha Revankar? If not, to what relief the workman is entitled to?”

1. The 1st Party Union has espoused the cause of its member Sh. Manjunatha S Revankar (1st Party herein after), an employee who was dismissed from service by the Management of Syndicate Bank (2nd Party herein after). The 1st Party had served the 2nd Party for 13 years prior to his dismissal. He was kept under suspension vide order dated 06.05.2003 pending enquiry, and was issued charge sheet dated 01.10.2003. He replied to the charge sheet and denied the allegation. The Enquiry was initiated by appointing Enquiry Officer and he participated in the enquiry. The Enquiry Officer submitted his report holding that the charges levelled against the CSE are proved. The Disciplinary Authority called for the remarks of the 1st Party on the enquiry report, and acting on the Enquiry Report dismissed him from service.

2. The 1st Party in the claim petition pleads that the investigation report was not supplied to him, he was not provided with sufficient opportunity during the enquiry and the enquiry was vitiated. The enquiry finding is perverse, and the Disciplinary Authority ignored his contentions, acted in a mechanical manner, victimized and punished him.

3. In its counter statement the 2nd Party denied the allegations levelled by the 1st Party and justified the action taken against the 1st Party.

4. Vide order dated 12.11.2013 the issue regarding the fairness of the Domestic Enquiry is upheld after a full-fledged trial.

Both have submitted arguments.

5. The gist of the charge sheet allegation was that he unauthorizedly remained absent from 13.03.2003 onwards. Despite the same on the morning of 13.03.2003 he had gone to the Branch; a pensioner namely Mrs A.P. Marathe/a SB A/c holder of 30197 had come to the Branch to collect her pension amount in the morning hours. She had obtained a withdrawal slip bearing No. 463143 filled it up for Rs. 2,500/-, she was issued token No. 96 against the withdrawal slip. She was informed that pension would be credited after 1st April. The 1st Party collected the token from her saying that pension will not be paid on that day and she has to come on another day. Thereafter the withdrawal slip was passed for payment; 1st Party collected the amount on behalf of the customer but did not pay the amount to the customer due to which she lodged a complaint on 07.04.2003; the cashier credited Rs. 2,500/- to her account to protect the image of the Branch.

The 2nd count of allegation is of unauthorized absence with consequent cut in the wages. Between 04.01.2003 till the date of suspension dated 06.05.2003, he attended the Branch only for 2 days.

6. During the enquiry on behalf of the prosecution five witnesses were examined, the first one being the complainant, the second one the Manager of the branch, the third - the Clerk of the branch, the fourth one - the Investigating Officer, and the fifth one - the then Senior Branch Manager. The 1st Party examined himself as a witness and was cross examined. Written brief was submitted by both the parties.

7. The complainant deposed corroborating the charge sheet allegation to the extent that she was not paid the pension amount on 13.03.2003 on the ground that the pension will not be paid on that day, and she returned the token and left the Branch. She came to the branch again after 4 days and was told that she had withdrawn her pension for the month of March 2003. She went back and after few days came to the Branch with her Uncle met the Branch Manager gave the complaint, which was witnessed by her Uncle. However, she was paid pension for the said month of March 2003. Since, she did not corroborate the charge sheet allegations to the full extent she was treated as hostile witness for the prosecution and was cross examined. It emerged that some Bank staff along with 2-3 others had gone to her house and told her not to inform anything about collection of token by CSE. She could not remember as to whom she handed over the token on that day.

8. MW-2 is the Manager of the Branch, deposed about incident that occurred at his residence on the evening of 13.07.2003 in the presence of previous Branch Manager. As per his version the 1st Party barged into the house abused him and others for suspending him. During cross examination he admitted that no Police complaint was given in respect of the incident. He clarified about the issue of token in favour of the complainant recorded at the Sl. No 12 in the

Officers Scroll (payments). He deposed that advance cash payments were made to VIP customers after obtaining tokens from them.

9. MW-3 is the Clerk of the Branch and identified a rough sheet pertaining to the transaction of 31.03.2003 wherein they record the cash received/ paid, while closing the cash balance on that day he made advance payments by collecting tokens to some of the staff members / pigmy agents. The 1st Party was one among such persons. He further deposed about making payment of Rs. 2,500/- to the 1st Party after recording the token number his name and the amount paid in MEX-28 and the withdrawal slip Ex MEX-1 was duly passed. Thereafter the entry was made at Ex MEX-28 and entered in his scroll MEX-30. Normally, he will not obtain the signatures of staff members when advance payments are made to the customers through staff. He further deposed about the complaint given by the complainant on which occasion, he revealed before the Manager that he received the token from 1st Party and made payment. At the instruction of the Manager he paid Rs. 2,500/- to the complainant. As per his evidence 1st Party signed his attendance on 29.03.2003 and unauthorizedly absent during March 2003 except 12.03.2003 and subsequently his signature on 29.03.2003 was cancelled. On 31.03.2003 the 1st Party was present in the Branch, the amount of Rs. 2,500/- paid to the customer is not returned by the 1st Party. He further deposed about the incident wherein the 1st Party had threatened him in the Branch Office consequent upon which he lodged the Police complaint on 08.06.2003, he gave the list of persons (Bank Officials and customers) from whom 1st Party had borrowed money.

10. MW-4 is the Manager, vigilance cell, he narrated the investigation carried out by him and statements recorded of the witnesses and complaint, and documents collected.

11. MW-5 is the then Senior Branch Manager of the Branch, he testified about the unauthorized absence of the 1st Party and identified the relevant attendance registers. He testified that on 29.03.2003 attendance was marked by the 1st Party but at 12 'O' Clock when he went on rounds near the counters CSE was not found, he was not present in the office for the entire day. Hence, his attendance was cancelled, and unauthorized absence was marked. Since, he had not submitted leave letter; on 31.03.2003 1st Party was present in the Branch but attendance was not marked. He was found preparing customers slips; and was asked to leave the Office if not joining the Branch; he identified the hand writing of the 1st Party on the withdrawal slip presented on behalf of the Complainant/customer, same was marked as MEX 35.

He further stated that, the Branch had many customers since it was 31st March and they had decided not to pay pension as it was crucial day and financial year end. He had informed the staff not to pay the pension cheques; if any cheques had been passed earlier the amount may be credited to the respective SB A/c or the suspense A/c. On that day 40 cheques were passed within 20 minutes and the withdrawal slip pertaining to the complainant/MEX-1 is also one among them. He further deposed about the complainant alleging fraudulent withdrawals on 07.04.2003; on verification of the account there was debit on 31st March and the cash was already paid. He further deposed about the complaint given by the complainant which was duly signed by her. On enquiry the Cashier informed that the cash was paid to the 1st Party on receiving token No. 96.

12. During the Defence evidence 1st Party denied the allegations, specifically his acquaintance with the complainant and pleaded alibi as on 31.03.2003. He deposed that he had submitted leave application along with Medical Certificate for the leave period. He alleged that MW-5 owed to one Sh. Nithin Karande Rs. 100,000/- but did not return the amount. On his failure to repay the amount the lender filed a Civil Suit against the 1st Party since, he was the person who had received loan on behalf of MW-5.

13. The Enquiry Officer has gone in detail while appreciating the evidence placed before him. He brushed aside the contention of alibi taken up by the 1st Party that he was away at Mumbai as on 31.03.2003, by examining the documentary proofs produced by the 1st Party. Relying on the evidence of MW-3, 4 and 5 supported by the attendance register and the withdrawal slip which was in the hand writing of the 1st Party as identified by MW-5 he records that the 1st Party was in the Branch on 31.03.2003. Though the complainant deliberately had not identified the person to whom she returned the token, she had stated before the Investigating Officer that she had returned the token to 1st Party. By relying on the eye witness account of the Official witnesses, supported by the documentary proof, the Enquiry Officer held that, the 1st charge was proved. As regards violation of leave rules and absence from duties at frequent intervals there was ample documentary proof supported by the evidence of the Official witnesses and thus enabled the Enquiry Officer to reach the conclusion that charges levelled in the charge sheet are proved.

14. It is a well-reasoned finding flowing from the proper appreciation of the evidence of the prosecution viz a viz the defence taken. Though there is no financial implication on the Bank due to his misappropriation of Rs. 2,500/- belonging to the customer, the misconduct has its ramification on the image that the Bank carries among the public. Naturally same will have impact on the customers shaking the business. It is needless to say the unauthorized absence violating the leave rules disturbs the work schedule in the establishment causing inconvenience on the day to day administration of the Bank.

15. It is from his past records that he was charge sheeted for his unauthorized absence and irregular attendance in the year 1998 and was imposed minor punishment. Again, in the year 2000 also he was punished for similar misconduct. In the year 2002 on the similar misconduct he was imposed minor punishment. In respect of the debts and liabilities towards the outsiders, there were multiple complaints against him.

16. The Disciplinary Authority observed that the misconduct as per the 1st charge is highly objectionable and amounts to gross misconduct under the provision of Bipartite settlement. As regards of the charge of remaining unauthorizedly absent without intimation it was observed that in spite of ample opportunities given to him he continued to violate the leave rules and was absent from the duties at frequent intervals unauthorizedly. The Authority referred to the untoward incident of 13.07.2003 wherein he abused the Former Branch Manager at the residence of the Manager and threatened him. The Defence taken by the 1st Party in his remarks to the enquiry report did not weigh upon the Authority. The Appellate Authority has also considered in detail the grounds urged by him in the appeal memo but did not appreciate the same, concurring with the Disciplinary Authority confirmed the punishment.

17. Looking to the gravity of the misconduct proved during the enquiry, and his tainted service records, I hold that the action of the Management in dismissing him from service is legal and justified not calling for the intervention of the jurisdiction under section 11 A of the I D Act.

AWARD

The reference is rejected.

(Dictated, transcribed, corrected and signed by me on 10th June, 2019)

JUSTICE SMT. RATHNAKALA, Presiding Officer

नई दिल्ली, 17 जून, 2019

का.आ. 1063.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार केनरा बैंक प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलोर के पंचाट (संदर्भ संख्या 45/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 17.06.2019 को प्राप्त हुआ था।

[सं. एल-12012/24/2011-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 17th June, 2019

S.O. 1063.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 45/2011) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the industrial dispute between the management of Canara Bank and their workmen, received by the Central Government on 17.06.2019.

[No. L-12012/24/2011-IR (B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated : 13th June, 2019

Present : Justice Smt. Rathnakala, Presiding Officer

C.R. No. 45/2011

I Party

Sh. M. S. Ramakrishna,
H. No. 336/A,
Near Ebenezar College,
Vinayaka Layout,
Railway Parallel Road,
Horamavu Village and Post,
Bangalore - 560 043.

II Party

The General Manager,
Canara Bank,
Head Office,
J.C. Road,
Bangalore - 560 002.

Appearance

Advocate for I Party : Mr. M.M. Ashoka

Advocate for II Party : Mr. T.R.K. Prasad

AWARD

The Central Government vide Order No. L-12012/24/2011-IR(B-II) dated 08.11.2011 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

“Whether the action of the management of Canara Bank, Disciplinary Action Cell, Circle Office, Bangalore in imposing the punishment of compulsory retirement from the service w.e.f. 23.10.2008 on Sh. M.S. Ramakrishna, Ex-Armed Guard is legal and justified? What relief the aggrieved workman is entitled to?”

1. The 1st Party herein is an Ex-serviceman and was appointed as Armed Guard in the 2nd Party Bank at M.G. Road, Metro Circle Office and as on 12.05.2007, he was working at Benson Town Branch of the 2nd Party. His duty was manning the main entrance of the Branch and accompanying the staffs while shifting the cash from place to place. On the complaint of one Sh. Abdul Wajeed, a customer of the Bank he was kept under suspension w.e.f. 12.05.2007. Police complainant was also lodged against him and 2 officials of the Bank, after investigation the police dropped the Criminal Case against him. The 2nd Party initiated disciplinary action by issuing charge sheet dated 10.03.2008. The Enquiry Officer after holding the enquiry gave finding that charge sheeted employee is guilty of the charges; he had sent his submission to the findings of the Enquiry Officer. However, he was impugned the punishment of Compulsory Retirement; his appeal was dismissed by the Appellate Authority.

2. The 1st Party claims before this Tribunal that the initiation of Disciplinary Proceedings against him is bad in law and fully biased. He is imposed punishment on the basis of the statement given by the Co-accused which will not stand the test of law. The enquiry initiated against him was biased, the Senior Manager of the 2nd Party had ill will against him and colluded with 2nd Party Head Office to involve him in the case, he is unemployed and suffering from financial hardship.

3. The 2nd Party denied the claim statement allegations and contended the finding of the Enquiry Officer is fair, proper and reasoned. The Appellate Authority afforded personal hearing to him on 12.03.2010 and heard his submission and had no reasons to interfere with the findings of the Enquiry Officer. The Appellate Authority concurred with the orders of the Disciplinary Authority. He has preferred the claim petition after prolonged, undue and unexplained delay.

4. On the rival pleadings touching the procedure of Domestic Enquiry a Preliminary Issue was framed, tried and adjudicated holding that the enquiry held against the 1st Party by the 2nd Party is fair and proper.

5. The 1st Party in his affidavit evidence claims that he is made a victim due to the personal vengeance by the Senior Manager of the 2nd Party Bank and he is not involved in the withdrawal of the cash from the account of Sh. Abdul Wajeed.

Both have submitted their written arguments.

6. The gist of the allegation against the 1st Party is one Sh. D T Raman a SB Account holder of the Benson Town Branch was the neighbour of Sh. Abdul Wajeed an account holder of 6025 in the same Branch. Said D T Raman fraudulently withdrew Rs. 2,75,000/- from the SB A/c No. 6025 on 19.04.2007, 23.04.2007 and 25.04.2007. The investigation revealed that 1st Party was Sh. D T Raman's friend for more than 2 years and assisted him to open the SB A/c No. 36257 in the name of his wife Smt. Malini at Benson Town Branch; he attended drinks parties arranged by Sh. D. T. Raman. During one such party for the query of Sh. D. T. Raman 1st Party informed him about the procedure for withdrawing amounts from 3rd Party's account, he gave the idea of withdrawing the amount from the old accounts where the balance was more. On 04.05.2007 Sh. Abdul Wajeed visited the Branch and complained about the fraudulent withdrawal of Rs. 2,75,000/- from his SB A/c. On 05.05.2007 the 1st Party attended the drinks party arranged by Sh. D. T. Raman in a Bar along with Sh. Radha Krishna/Clerk of the Bank and all the three of them discussed about the withdrawal of Rs. 2,75,000/-, they had assembled there to draw a strategy about the future course of action, he has received Rs. 30,000/- from Sh. D. T. Raman out of the fraudulently withdrawn amount. He was visiting the house of Sh. Radha Krishna, he was engaged in real estate business on commission basis along with his friends and was maintaining a Office at Banaswadi.

7. During the enquiry the Management examined five witnesses and marked 5 documents. The 1st Party opted not to lead evidence however, 4 documents were marked from his side.

8. The first witness for the Management was the Investigating Officer/MW-1, he produced his inquiry report, the documents pertaining to the fraudulent withdrawal and statements of the witnesses recorded by him during the course of his investigation. The cross-examination was focused more on the documents pertaining to the fraudulent withdrawal rather than on the incriminating evidence against CSE which was in the nature of statement of the witnesses. MW-2 was the Officer HRM section, Circle Office, Bangalore Metro; she identified the letter issued from the HRM section calling for explanation from the 1st Party in the matter of fraudulent withdrawal of Rs. 2,75,000/- and the reply submitted by him etc. The third witness was the Chief Manager of the Branch/MW-3, his evidence was to the effect that he has given statement to the Investigating Officer and identified another statement given by Sh. D T Raman in his presence to the Investigating Officer. MW-4 is the complainant/holder of SB A/c No. 6025. MW-5 was the then Senior Manager; he identified the statement given by Sh. D. T. Raman.

9. The statement of the 1st Party given before the Investigating Officer was marked through him as Ex MEX 02/14. The Defence had objected marking of the document on the ground that, while taking the statement, the Investigating Officer had put some direct questions to him and obtained the reply by way of statements. The Enquiry Officer at that time had over ruled the objection and the enquiry report observed that while over ruling the objection he had clarified to the defence that the question whether the statement was obtained voluntarily/freely can be examined during examination of witness. However, during cross-examination of witness defence did not pose any question regarding Ex MEX 2/14. Sh. D. T. Raman had given statement before the Investigating Officer that, out of stolen money he had parted Rs. 30,000/- with CSE. The defence before the Enquiry Officer was that Sh. D. T. Raman is a criminal and his statement cannot be relied; the Management without verification involved innocent employees like himself and others; his confession statement relating to the role of others should be supported with sufficient and authenticated documentary evidence. His confession statement is illegal and false. Sh. D. T. Raman was not examined as a witness before the enquiry; he had only explained the procedure when Sh. D. T. Raman enquired about the system and procedure of withdrawing all the amounts from his own account. The Enquiry Officer ruled out the defence by observing that there was nothing on record, suggesting enmity or personal grudge between the CSE and Sh. D. T. Raman. The Enquiry Officer took clue from the defence Representative who had stated that the CSE is maintaining distance from Sh. D. T. Raman and recorded his inference that unnecessarily naming an armed guard like the Charge Sheeted Employee to have given the idea of obtaining cheque Book and withdrawing money fraudulently, there are no benefits available for Sh. D. T. Raman and the defence case was not that investigating Officer has any grudge against the CSE to fix him by obtaining any incriminating statement from Sh. D. T. Raman. Further the Enquiry Officer Observes that, the confession statement has been witnessed in executing by the account holder, Branch In-Charge and the Senior Manager of the Branch apart from the Investigating Officer against whom also the defence has no case of witch-hunting of CSE. The Enquiry Officer further observed that the statement of CSE marked as Ex MEX 2/14 corroborates the statement of Sh. D T Raman; the CSE had stated his close acquaintance with Sh. D T Raman for last two years and had admitted about attending the drinks parties with Sh. D. T. Raman and during one such drink party Sh. D T Raman had enquired about availing cheque book etc. Having no other reason to disbelieve the statement of Sh. D T Raman as to the involvement of the CSE, the Enquiry Officer held that the involvement of the CSE in the fraudulent withdrawal transaction. Since, the 1st Party has not built up a defence that, his statement was obtained under force and coercion. There was no cross - examination to the witnesses in this regard.

10. The 1st Party assailed the Enquiry report in his remarks submitted to the Disciplinary Authority. The Disciplinary Authority without much deliberation on the remarks submitted by the CSE endorsed the finding of enquiry and ordered Compulsory Retirement. The Appellate Authority followed the suit of Disciplinary Authority and dismissed the appeal. The 1st Party has produced the certified copy of the charge sheet submitted by the J C Nagar Police station dropping the proceedings against him for want of evidentiary materials. He has also produced the appreciation letter given to him by the 2nd Party.

11. As per prosecution case, the role attributed to the 1st Party in the fraudulent withdrawal is, he gave the idea of taking cheque book of SB A/c No. 6025 of the account holder and withdrawing the amount from old accounts where the balance was more, he was closely associated with Sh. D T Raman and had assisted him to open SB A/c in the name of his wife, he attended the drinks party arranged by Sh. D T Raman on three occasions. Immediately after the fraud came to light Sh. D T Raman arranged a drinks party on 05.05.2007 to the 1st Party and the Clerk Sh. Radha Krishna who had passed the cheques. In pursuance of the discussion Sh. D T Raman destroyed the cheque book obtained by him pertaining to SB A/c No. 6025, 1st Party received Rs. 30,000/- in cash from Sh. D T Raman from out of fraudulent withdrawal. Sh. D T Raman on the subsequent dates on 07.05.2007 and 10.05.2007 met the 1st Party and had enquired about the 3 cheques under which the money was withdrawn, Sh. D T Raman had made 5 to 6 calls to the mobile phone of the 1st Party after remitting a part of fraudulently withdrawn amount to the Bank, which indicates that there was nexus between the 1st Party and Sh. D T Raman and said Sh. D T Raman tried to contact him to recover the money paid to him as confessed by him before the Investigating Officer during the investigation.

12. It was not the case of the 2nd Party that the 1st Party physically indulged in the fraudulent withdrawal; at the most his role is restricted to that of co-conspirator/abater of the offence and finally beneficiary of a portion of the stolen money. However, no such amount is seized from his position. It is surprising that there was no cross-examination from the defence side to Investigating Officer denying the so called statement given by the 1st Party as Ex MEX 2/14. The

statement given by Sh. D T Raman was marked as Ex MEX 2/13; the defence never made attempt to refute his acquaintance of CSE with Sh. D T Raman or enjoying the drinks party given by Sh. D T Raman along with Sh. Radha Krishna; he had every opportunity before the Enquiry Officer to give rebuttal/defence evidence which he did not avail.

13. As per the statement of Sh. D T Raman at Ex MEX 2/13 1st Party was the one who advised him to commit fraud to share 50% of the amount withdrawn with Sh. Radha Krishna who issued the cheque book; he had paid Rs. 30,000/- to the 1st Party on 24.04.2007 on the date he withdraw Rs. 60,500/- from SB A/c No. 6025. The 1st Party in his statement admitted about participating in the drinks party offered by Sh. D T Raman and has stated that he only informed Sh. D T Raman about withdrawal of Rs. 2,75,000/- from SB A/c vide 3 cheques; as such a guard has nothing to do in the clerical or administrative work of the Branch. If that is so how should this guard come to know about the withdrawal of amount of Rs. 2,75,000/- by way of 3 cheques and why he should pass on the said information to Sh. D T Raman/the main culprit. This statement since not denied by the 1st Party there being no coercion on him to give this statement to the Bank, the Enquiry Officer observes in his report that the *said confession statement is witnessed in executing by the Account Holder, Branch In-charge and the Senior Manager of the Branch and the Investigating Officer against him also the defence has no case of witch-hunting of CSE for any reasons whatsoever and hence I find no information in the evidentiary value of Ex MEX 2/13.*

14. The police have dropped the case against 1st Party for want of evidence but that cannot be a ground for him for bailing him out of the charges in Domestic Enquiry. The nature of evidence in a Departmental Enquiry need not be on the parameter of 'proof beyond all reasonable doubt nor it should restrict itself to the 'principles of preponderance of probability'. During the cross-examination of management witness, the defence was trying to contradict the allegation of fraudulent withdrawal by Sh. D T Raman there was not even a single question refusing the nexus between the 1st Party and Sh. D T Raman; fraudulent withdrawal of cheque though by a 3rd Party with the assistance of the Bank employee invokes serious distrust among the customers against the Bank. The Bank being a custodian of the public money owe it's responsibility to guard the interest of its customer and also has to maintain its image. However feeble may be the role of the 1st Party in the fraudulent misconduct his complicity in the misconduct firstly as an abater, secondly as beneficiary is glaring from his own statement. He is an Ex-serviceman having the benefit of pension; continuing a employee in service whose activities are suspicious is deterrent to the business and administration of the Bank.

15. Hence, I opine that the Enquiry Officer's finding that *the employee is guilty of the charges* does not suffer from flaw or perversity. He is imposed with the punishment of Compulsory Retirement which means to say that he is not disentitled to get terminal benefits or pension like any other employee superannuating from services. The punishment commensurate with the gravity of misconduct and the action of the management thus is legal and justified. The workman is not entitled for any further relief under the reference.

AWARD

The reference is rejected.

(Dictated, corrected and signed by me on 13th June, 2019)

JUSTICE SMT. RATHNAKALA, Presiding Officer

नई दिल्ली, 17 जून, 2019

का.आ. 1064.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार केनरा बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलौर के पंचाट (संदर्भ संख्या 53/2009) को प्रकाशित करती है जो केन्द्रीय सरकार को 17.06.2019 को प्राप्त हुआ था।

[सं. एल-12012/71/2009-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 17th June, 2019

S.O. 1064.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 53/2009) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the industrial dispute between the management of Canara Bank and their workmen, received by the Central Government on 17.06.2019.

[No. L-12012/71/2009-IR (B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
BANGALORE**

Dated : 13th June, 2019

Present : Justice Smt. Rathnakala, Presiding Officer

C.R. No. 53/2009

I Party

Sri M. B. Ravikumar,
S/o V. Laxman,
Ex. Employee of Canara Bank,
At Post: Devikere,
Taluk: Jagalur,
District: DAVANGERE

II Party

The Deputy General Manager,
Canara Bank, Circle Office,
IMA House,
Bailappanavarangar,
Hubli – 29.

Appearance

Advocate for I Party : Mr. Anant P Savadi

Advocate for II Party : Mr. T.R.K. Prasad

AWARD

The Central Government vide Order No. L-12012/71/2009-IR(B-II) dated 24.11.2009 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

“Whether the imposition of punishment of compulsory retirement from service against Sri. M. M. Ravikumar by the management of Canara Bank is legal and justified? To what relief the workman is entitled to?”

1. The 1st Party workman is an Ex-employee of the 2nd Party and is compulsorily retired from service, consequent upon the disciplinary proceedings held against him. He was working as a Clerk and was issued charge sheet dated 29.08.2005. He submitted his objection to the charge sheet. The 2nd Party initiated departmental enquiry. The Enquiry Officer after holding enquiry submitted his report that the charges are proved. The disciplinary Authority passed the punishment order acting on the enquiry report.
2. The 1st Party in his claim statement contented that the charge sheet was not issued by Competent Authority and it was issued in a pre-judged and biased mind. He has not committed misconduct as alleged. The Enquiry Officer was not appointed by competent Authority. The Enquiry Officer did not record his response to the incriminating evidence appearing in the statement of Management witnesses; relevant witnesses were not examined by the Management. The findings of Enquiry Officer are perverse. Competent Authority has not passed punishment order. The Appellate has not passed speaking order. Without considering his defence the Appellate Authority dismissed his appeal.
3. While justifying their action, in their counter statement the 2nd Party contended that the domestic enquiry was conducted as per the provisions of Canara Bank Service Code which is in consonance with the Bipartite Settlement and Awards governing the 1st Party. During enquiry the Management examined 6 witnesses; they were cross-examined by the Defence representative; 32 documents were marked as Management exhibits. Both parties were permitted to file their written brief. The finding of the Enquiry Officer is fair, proper, and reasoned.
4. It is further stated by the 2nd Party that, the finding of the Enquiry Officer was marked to him by the Disciplinary Authority and he made his submissions to the findings. After analysing the findings of the Enquiry Officer and the submissions made by CSE to the findings of Enquiry Officer, on consideration of gravity of misconduct circumstances of this case, the Disciplinary Authority proposed the punishment of compulsory retirement; gave him a personal hearing in this regard. He attended personal hearing and made his submission. The Disciplinary Authority considering the entire material and the submissions of the 1st Party held that the CSE is guilty of the charges and imposed the impugned punishment. The Appellate Authority after careful consideration of his appeal and after giving personal hearing rejected the appeal, vide detailed order dated 06.06.2007. The Departmental proceeding held in fair and proper manner, giving him due opportunity at every stage. The punishment order is proportionate to the proved misconduct, same is legal valid and justified.

On the rival pleadings in respect of Domestic Enquiry this Tribunal framed a preliminary issue as follows:-

“Whether the Domestic Enquiry held against the 1st Party by the 2nd Party is fair and proper?”

5. To discharge their burden of proving the issue 2nd Party examined the Enquiry Officer who was the then Senior Manager enquiry Set up circle Bangalore. He narrated in chronological order the details of the events of Enquiry and produced the enquiry records as Ex M-1 to Ex M-23. He was cross-examined by the learned counsel for the 1st Party but without any result. No rebuttal evidence was adduced on behalf of the 1st Party, he remained continuously absent. Notice issued to him returned with the endorsement ‘Party expired returned to sender’. No steps are taken to bring his legal heirs on record.

6. I have gone through the Enquiry records; 1st Party workman was issued charge sheet dated 29.08.2005. But the charge sheet returned unserved, on appointment of Enquiry Officer and Presenting Officer notice of enquiry was issued and the same was served on him. However, subsequently he has received the charge sheet and appeared before the Enquiry Officer on 13.12.2005. He admitted having received the charge sheet, reading and understanding the same; he denied the charges he was given permission to engage the Defence Representative of his choice.

7. Regular enquiry commenced from 13.12.2005, the Management examined 6 witnesses and through them produced 32 documents. The copy of day to day proceedings was furnished to him. The 1st Party opted not to cross examine MW-1, MW-3 and MW-4 however, he cross-examined MW-2, MW-5 and MW-6. He opted not to adduce defence evidence and three documents was produced by him were taken on record and marked as Exhibits. On both parties submitting their written brief the Enquiry Officer submitted his written findings.

On a perusal on the above all, I am convinced that the enquiry held against the 1st Party workman was fair and proper. Hence, answer the preliminary issue in the affirmative.

8. The 1st Party was charge sheeted on 3 counts:-

Firstly, he issued a cheque dated 28.12.2004 bearing No. 789501 for Rs. 10,000/- favouring Sh. M.B Krishnappa Clerk working at P.B Road Branch Davanagere. The cheque was discounted by the said Branch and same was sent to Sindhanoor Branch by RPAD on 29.12.2004, which was received at Sindhanoor Branch at 31.12.2004. The Officer Sh. S G Gopinath handed over entire tappal to the 1st Party for inwarding but he deliberately removed the discounted cheque to avoid presentation on his SB A/c 9728. He unauthorizedly removed the cheque book bearing No. 789501 to 789510 from the Branch. He removed a cheque leaf bearing No. 789501 from the above cheque book and issued the same in favour of Sh. M. B. Krishnappa, knowingly that sufficient balance was not available in his SB A/c.

Secondly, he borrowed money from the customers of the Branch and became due.

Thirdly, he is in the habit of remaining absent very frequently and unauthorizedly. He was advised to avail the leave judiciously and follow leave rules scrupulously. He remained absent since 07.02.2005 without information/prior leave application, thereby, he has committed misconduct within the meaning of Chapter XI Regulation 2A, 3J, Regulation 5 clause(a) of Canara Bank Service Code.

9. In support of the 1st charge the Management examined 6 witnesses; the 1st witness was the Manager P B Road Davanagere Branch. He confirmed that only one cheque of the CSE was discounted to Sh. N B Krishnappa at their Branch, and the CDB NO. 202 pertaining to Sh. Krishnappa, but the amount was not realised. But the amount with interest was recovered from the OD A/c 5176 of Sh. Krishnappa. The witness identified the letter transaction with the Sindhanoor Branch there was no cross-examination to him.

The 2nd witness was the Investigating Officer he narrated in detail about tracing the missing of cheque issued by the CSE and discounted to Sh. N B Krishnappa, through him the letter transaction between Sindhanoor Branch and Davanagere Branch the statement of CSE and Sh. N B Krishnappa and the letters addressed to the Sindhanoor Branch by the lenders to the CSE were marked.

The 3rd witness was Sh. N B Krishnappa who confirmed that CSE has not paid back the amount and the interest, which was remitted by him to clear the liability of his CDB which was not realised. He was not cross-examined.

The 4th witness is the Manager Staff Section (O-BCO), he deposed about calling for explanation from the CSE in the matter of missing of cheque issued by him and discounted by Sh. N B Krishnappa. He was not cross-examined.

The 5th witness was the then Officer Sindhanoor Branch at the relevant point of time. He identified the documents pertaining to missing of discounted instrument discounted at P B Road Davanagere pertaining to CSE and the connected documents. He also identified the leave record during his tenure pertaining to CSE, he stated that CSE when was absent he used to be absent continuously.

The 6th witness was the Official who had worked at Sindhanoor at the relevant point of time. He identified the documents pertaining to the letter transaction with the Post Office while searching the missing instruments. He stated that he has brought to the notice of the Circle Office the information received about CSE's borrowing. He confirmed that CSE is a frequent leave taker.

10. The 1st Party did not adduce rebuttal evidence. In his detailed report the Enquiry Officer considered the undisputed documentary evidence marked through the Official witnesses and recorded the finding of guilt in respect of all the 3 charges.

11. The Enquiry finding is supported by the proper appreciation of evidence and well-reasoned. The Disciplinary Authority and the Appellate Authority, both on giving their personal hearing have passed the respective order. The punishment of compulsory retirement viz a viz the misconduct proved during the enquiry is proportionate not calling for interference. During his Official duty he has removed Cheque from the Branch so as to prevent presentation of the cheque to his SB A/c to gain pecuniary advantage for himself. He has become due to several customers of the Bank. Thus, he failed to discharge his duty with utmost integrity and committed misconduct. Borrowing from the clients of the Bank amounts to misconduct as per the service code of the Bank. For 92 days he remained absent without prior sanction of leave. Thus, he violated the leave rules of the Bank which amounts to a minor misconduct. In the meantime, the 1st Party is said to have expired and his legal heirs have not come forward to prosecute his case. However, having commenced probe into the Industrial Dispute it is necessary to adjudicate the dispute on merits without closing the petition as abated on the death of the 1st Party workman.

12. The action of the Management in imposing punishment of compulsory retirement from service against 1st Party workman is legal and justified. The workman is not entitled for any relief under the reference. While parting, it is noticed that the reference of the dispute pertains to the 1st Party workman namely Sh. M M Ravikumar, but at the same time the address in the copy of the reference order is marked to Sh. M B Ravikumar, S/o V. Laxman, Ex. Employee of Canara Bank, At Post: Devikere, Taluk: Jagalur, District: DAVANGERE and in the cause title of the claim statement 1st Party workman is mentioned as Sh. M B Ravikumar, unfortunately at this stage there is no one to answer the discrepancy. However, assuming that the 1st Party workman in the order of reference and the 1st Party before this Tribunal are one and the same, this reference is disposed of.

AWARD

The reference is rejected. However, if the 2nd Party has with held any amount towards his terminal benefit/Pension same shall be disbursed in favour of his Class-I Legal Heirs forthwith.

(Dictated, transcribed, corrected and signed by me on 13th June, 2019)

JUSTICE SMT. RATHNAKALA, Presiding Officer